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**Economic and Social Commission for Western Asia (ESCWA)**

## **The Strength of Competition Policy and Regulation in the Arab Region – Application of OECD Indicators to selected Arab Countries in 2015**



United Nations  
Beirut, 2016

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## I. Introduction

### A. Background

The objective of this paper is to provide an overview of indicators of competition policy in the Arab region, with the purpose of raising awareness of the need for high-level regional ownership and assessing the capacity of member States of the Economic and Social Commission for Western Asia (ESCWA) for drafting, implementing and enforcing competition legislation. Overall, the purpose of the indicators is to:

- Identify national legislative gaps and requirements, as a basis for helping policymakers in formulating effective policy;
- Highlight current institutional arrangements and their efficiency;
- Provide policy makers with an instrument for self-assessment and peer comparison within and beyond the Arab region.

Using the established instrument of the Organization for Economic Co-operation and Development (OECD) on competition policy, ESCWA conducted in the second half of 2015 a survey of selected Arab countries. Two sets of indicators are computed, each reflecting a different way of aggregating the data (figure 1). For the first (more aggregated) indicator set, the information collected from the questionnaire is regrouped into four main indicators: ‘scope of action’, ‘policy on anticompetitive behaviours’, ‘probity of investigation’, and ‘advocacy’ (set 1 in figure 1).

For the second (more disaggregated) indicator set, the information is regrouped into twelve separate indicators that capture more specific features of competition law and policy: ‘competences’, ‘powers to investigate’, ‘powers to sanction and remedies’, ‘private enforcement’, ‘policy on horizontal agreements’, ‘policy on vertical agreements’, ‘policy on mergers’, ‘policy on exclusionary conducts’, ‘independence’, ‘accountability’, ‘procedural fairness’, and ‘advocacy’ (set 2 in figure 1). Each of the four components of the first set includes one or more specific components of the second, as illustrated by the dotted lines. These four components and their subsections are generally meant to probe the legal and policy frameworks that are implemented in ESCWA member States and to enable comparison of established ‘good’ competition practice, while testing the level of enforcement of competition regimes across the region, as well as beyond.

To assess the indicators in a first-of-its kind exercise, ESCWA, in collaboration with the OECD conducted in 2015 a survey on Competition Policy and Regulation in the Arab region. The respective country responses form the basis for the results and the discussion presented in this paper. The survey was carried out between July and September 2015 with the options of completing the questionnaire on a pen/pencil base or online, in either English or Arabic.<sup>1</sup> To date, we received responses from seven out of seventeen member States: Algeria, Egypt, Kuwait, Morocco, Syrian Arab Republic, Tunisia and Yemen (with the latter’s response being incomplete, with no information on the indicators sets “Policy on anticompetitive behaviours” and “Advocacy”). Preliminary results of the survey were presented and discussed with representatives of the competition authorities in the Arab region at an Expert Group Meeting on “Competition legislation and regulation – challenges and opportunities in the Arab Region” that took place on 8 and 9 December 2015 in Beirut (annex I).

Given the political, economic and social challenges the Arab region faces, ESCWA continues its engagement with member States on competition policy, with the aim of completing the data set for the Arab region as a whole. Individual country results, in the form of case studies, have been shared for feedback and review with the respective authorities in the responding countries. In addition, as a result of the Expert Group Meeting in

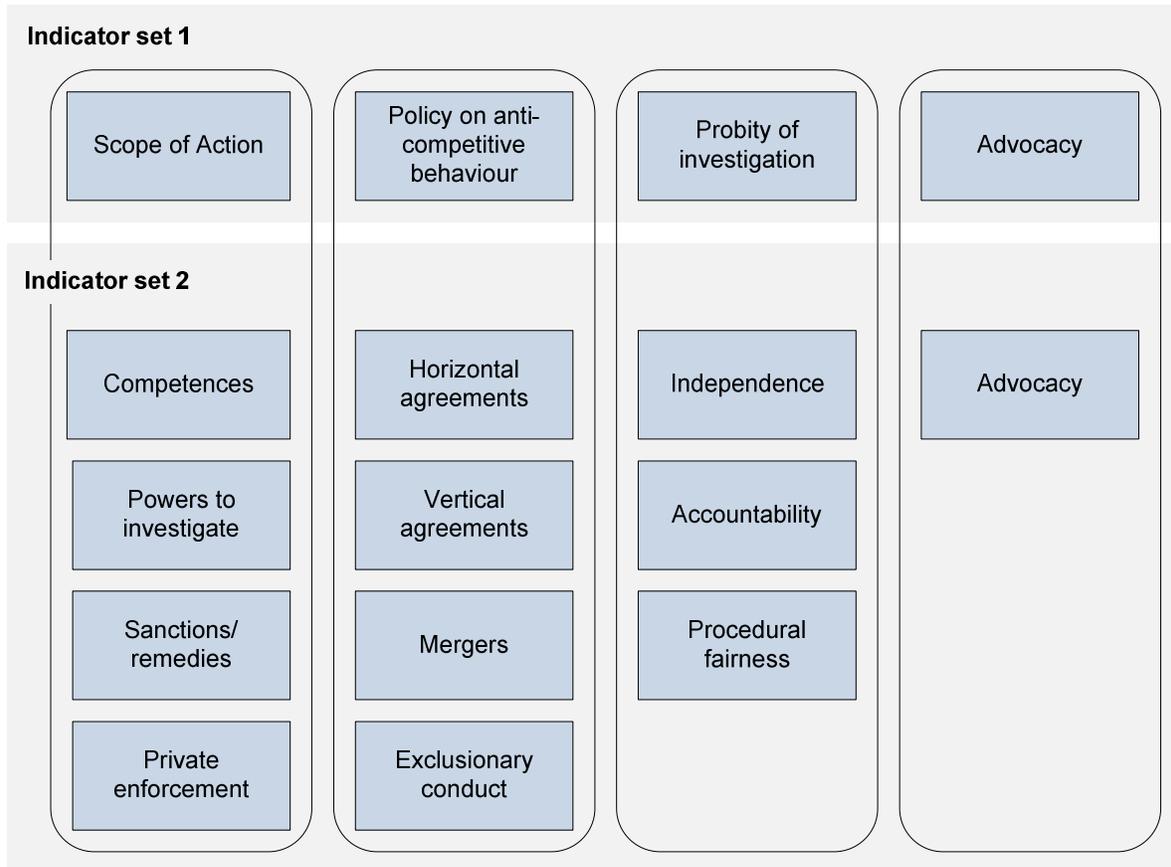
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<sup>1</sup> English version: [https://eSurv.org?u=ESCWA\\_competition\\_policy\\_survey\\_EN/](https://eSurv.org?u=ESCWA_competition_policy_survey_EN/). Arabic version: [https://eSurv.org?u=ESCWA\\_competition\\_policy\\_survey\\_AR/](https://eSurv.org?u=ESCWA_competition_policy_survey_AR/).

Lebanon, a country without a competition legislation decided to review and update its existing draft legislation and exert additional efforts towards actual implementation of the draft law.

The objective of this paper is to provide a basis for further discussion and to help countries identify gaps in legislation, as well as in its implementation and enforcement.

**Figure 1. OECD indicators on competition and policy**



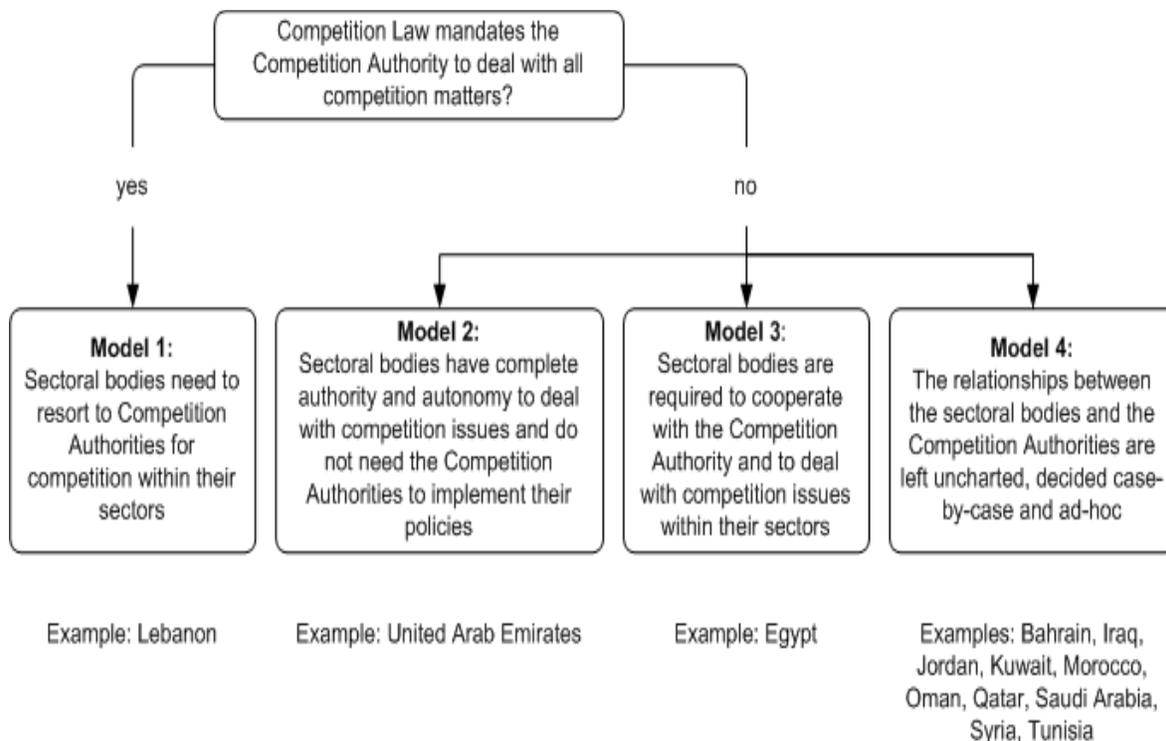
**Source:** Alemani and others, “New indicators of competition law and policy in 2013 for OECD and non-OECD Countries”, OECD Economics Department Working Papers, No. 1104 (Paris, OECD Publishing), p. 9.

**B. Institutional context in the Arab region**

The Arab region faces a set of challenges that impede effective application of existing competition legislation. These include a lack of “competition culture”, so-called; intertwined business networks, based on family connections or relations, that lead to high market concentration; and absence of broader development objectives that integrate competition. Often, in the Arab countries, the role of competition in an effective economy still needs to be clarified from a legal perspective. It appears that, even at the global level, countries negotiate the balance of the relationship between the actual law and the entities that apply it (e.g., sectoral bodies and regulators). With experience, different countries develop different solutions or pursue different models of legislative and institutional design. Sectoral bodies are the regulatory and representative institutions of specific economic sectors (e.g., telecommunications), and, invariably, jurisdictions of the competition authorities and those of sectoral bodies overlap, depending on the regulatory nature of the two, and the legal relationship between them can vary from country to country. For the Arab region, four models can be

distinguished (figure 2). All countries responding to the survey, with the exception of Egypt,<sup>2</sup> allow case-by-case/ad-hoc interaction between the sectoral bodies and the main competition authority. Without a prescription of authority, when competition-relevant conflicts arise, jurisdictional authority is decided upon an ad-hoc and case-by-case basis. In the best case, flexibility and openness lead to collaborative solutions; in the worst, the various bodies block each other or diffuse responsibility to an extent that competition matters cannot be decided in a timely fashion in the best interest of the national economy.

**Figure 2. Modelling the relationship between competition authorities and sectoral bodies across the Arab region**



Source: ESCWA, 2015.

Far from being detrimental to the operations of the competition authorities or the sectoral bodies, a well-defined legal relationship between the two may lend more transparency, representativeness and efficiency to the process of addressing issues of antitrust infringement. When discussing competition policy, it is important to note that the Arab region consists of a portfolio of countries that are at very different stages of development, with the political (countries facing conflict such as the Syrian Arab Republic and Yemen) and economic (low-income, middle-income, high-income) contexts influencing the strength of the institutions.

With these challenges and the country-specific context in mind, the following sub-chapters discuss the specific survey results for selected Arab countries, both by each Competition Law and Policy (CLP) indicator (indicator set 2) separately, as well as aggregated under the four main CLP indicators (indicator set 1). The paper is a ‘regional summary’, and in-depth information on each responding Arab country can be found in annex II.

<sup>2</sup> The relationship of the Egyptian Competition Authority with sectoral bodies falls into the Model 3 category, as per figure 3. In this case, sectoral bodies must cooperate with the ECA, adopting a consultative role, while being integrated in the decision-making process. See article 11 (10) of Law No. 3 of 2005. See <http://www.eca.org.eg/ECA/StaticContent/View.aspx?ID=5>.

**Table 1. Competition authorities and relevant legal texts**

| Country, Competition Authority  | Legal Texts  |
|---|--|
| Algeria, The National Competition Council   | Executive Decree No. 11-241 of 2011, <i>The Organization and function of the Competition Council</i>   |
| Bahrain, Ministry of industry, commerce and tourism   | There is no competition law in force in Bahrain. However, Legislative Decree No. 7 of 1987 promulgating the <i>Law of Commerce</i> , addresses unfair competition and provides prohibitions for certain acts<br><br><i>The Takeovers, Mergers and Acquisitions Module</i> , Volume 6, Rulebook issued by the Central Bank of Bahrain applies to take-overs, mergers and acquisitions |
| Egypt, Competition Authority  | Law No. 3 of 2005, <i>The Protection of Competition and the Prohibition of Monopolistic Practices</i>  |
| Iraq, Council of Competition and Monopoly prevention affairs  | No. 14 of 2010, Competition and Monopoly prevention law  |
| Jordan, Ministry of Industry and Trade, Competition Directorate   | Law No. 33 of 2014, <i>The Competition Law</i>   |
| Kuwait, Authority for the Protection of Competition   | Law No. 10 of 2007, <i>Protection of Competition</i>   |
| Morocco, Competition Council  | Law No. 06-99 of 2000, <i>Free Pricing and Competition</i>   |
| Oman, Public Authority for Consumer Protection (PACP)   | Sultani Decree 67 of 2014 Promulgating <i>Competition Protection and Monopoly Prevention Law</i>   |
| Qatar, Ministry of Economy and Commerce, “Committee for the Protection of Competition and Prevention of Monopolistic Practices” | Law No. 19 of 2006, <i>The Protection of Competition and Prevention of Monopolistic Practices</i>  |
| Kingdom of Saudi Arabia, Competition Protection Council   | <i>The Competition Law</i> , Promulgated by Royal Decree No. M/25 of 4/5/1425H (22 June 2004).   |
| The Syrian Arab Republic, The Competition Council   | Law /7/ of 2008, <i>Act of Competition Protection and Prevention Monopoly</i>  |
| Tunis, Competition Council/Directorate of Competition and Economic surveys  | Law No. 91-64 of 1991, <i>Competition and Pricing</i>  |
| United Arab Emirates, The Competition Regulation Committee, Ministry of Economy   | Federal Law No. 4 of 2012, <i>The regulation of competition</i>  |
| Yemen, Public Administration to Promote Competition and Prevent Monopoly and Commercial Fraud, Ministry of Industry and Trade   | Republican Decree No. 19 of 1999, <i>Competition Promotion and prevention of Monopoly and Commercial Fraud</i>   |

**Source:** Authors’ compilation.

## II. Scope of action

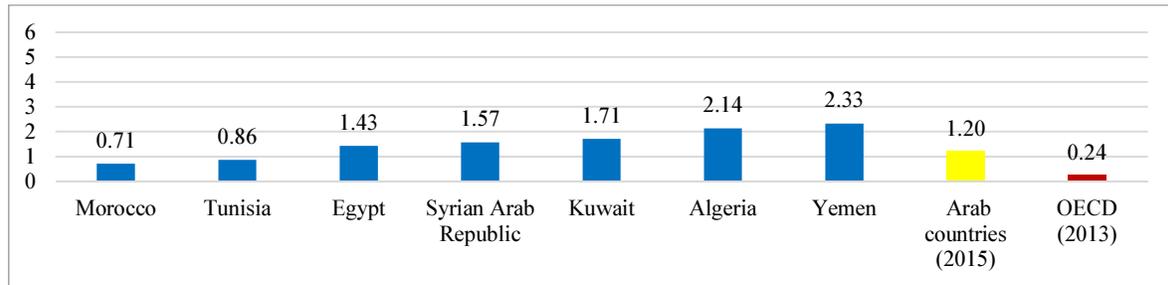
The Scope of Action is a composite indicator measuring four separate indicators relating to competences regarding the competition authorities’ jurisdiction and legal reach, and powers to investigate antitrust infringements, as well as impose sanctions and demand remedies. It also evaluates whether individuals and firms have legal recourse to seek damages for antitrust infringement through the legal system. (The survey results in each dimension are discussed separately below). In addition, the indicator seeks to measure the legal potency and reach of the CLP and the relevant Competition Authority. A comparatively good score indicates a solid legal framework and a competition authority that has both the jurisdiction and the ability to conduct investigations and impose sanctions wherever and whenever antitrust infringements are committed. In contrast,

a weak score indicates the necessity for developing either the legal framework or the institutional capacity of the competition authority to comply with ordinances and norms.

In the Arab region, CLP frameworks generally fall in line with internationally recognized good practices, but fall short in certain respects: (a) limited jurisdictions for the competition authorities, especially with respect to the application of competition legislation to State-owned enterprises (SOEs) and certain types of international firms operating in the country; as in the cases of Algeria, Egypt, Kuwait and Yemen; and (b) competition authorities not having complete investigative reach or the necessary legal authority to sanction persons or firms found guilty of antitrust infringement, as in the case of Yemen.

Although the Arab region scores relatively lowly in comparison with the OECD average, the fundamental legal and policy frameworks in place are in line with international norms of competition practices, and there are signs of continued reform. Morocco and Tunisia approach the OECD average and their practices are noteworthy examples for other countries, and not only in the Arab region. There has also been a sustained effort to reform and implement competition legislation and policy with respect to scope. Recent reforms to the legal code relevant to competition include those in the Syrian Arab Republic (2008), Algeria (2011), Kuwait (2012), Morocco (2014), Egypt (2014), Tunisia (2015), Morocco (2015).

**Figure 3. CLP indicator - Scope of action**



**Source:** ESCWA calculations, OECD figures from (Alemani and others, 2013).

**Notes:** (a) Scale: 0 to 6 from most to least conducive to competition; (b) The result for Yemen is based ONLY on the responses to three out of the four sections of the survey questionnaire: “Competences”, “Powers to investigate” and “Powers to remedy/sanction”; with no responses to the questions in the section on “Private enforcement”.

### A. Competences

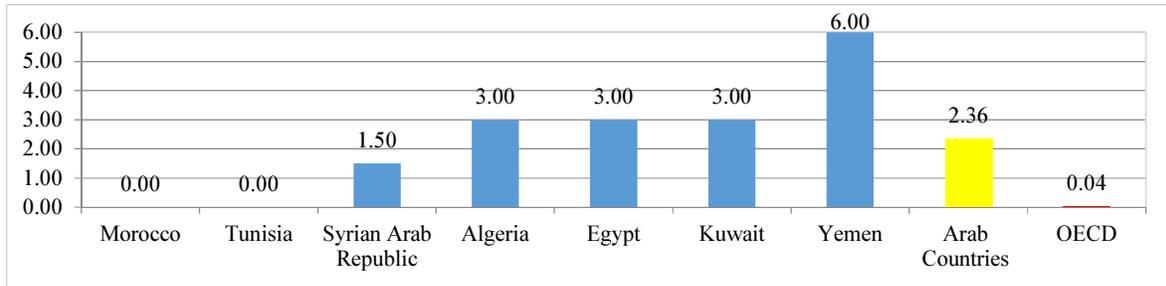
This indicator assesses the jurisdictional reach of the national CLP and the competition authorities involved. Based on the responses to the survey, Arab countries can be divided into three categories in relation to the extent of the jurisdictions of the competition authorities (figure 4): (a) countries where both SOEs and foreign firms are held liable to antitrust legislation in a uniform application of the law (Morocco<sup>3</sup> and Tunisia); (b) countries where there is limited or partial jurisdiction, either exempting SOEs or foreign firms from competition law, as is the case in Algeria, Egypt, Kuwait and the Syrian Arab Republic; and (c) countries where SOEs and foreign firms are fully exempt from the national competition law (e.g., Yemen).

Exempting SOEs and foreign firms from competition law is not necessarily indicative of a flawed competition regime. Such exemptions can be part of a national development strategy; for example, to protect strategic or nascent domestic industries, or can form part of a policy aimed at attracting foreign direct investment to the

<sup>3</sup> Note: Even in the case of Morocco and Tunisia, SOE's may be exempt from competition law in certain cases; See: For Morocco, Article 3 and 4 of Loi No. 104-12 relative a la Liberté des Prix et de la Concurrence, 2014). For Tunisia, Article 3 and 4 of Loi no. 91-64 relative à la concurrence et aux prix, 1991).

country.<sup>4</sup> However, in countries challenged by crony capitalism, corruption and institutional inefficiencies, SOE and foreign-firm exemptions can exacerbate these problems.

**Figure 4. CLP indicator - Competences**



**Source:** ESCWA calculations, OECD figures from (Alemani Alemani and others, 2013).

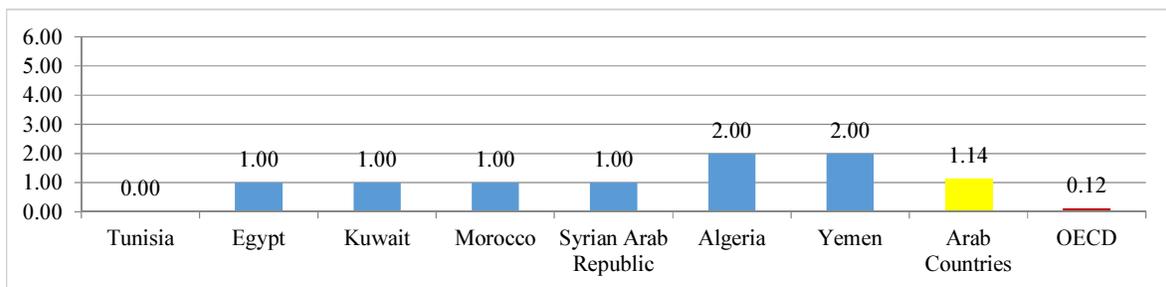
**Notes:** Scale: 0 to 6 from most to least conducive to competition.

## B. Investigative powers

This indicator assesses the reach of the jurisdictions of the competition authorities and their ability to investigate allegations of antitrust behaviour. Most competition authorities in the Arab region possess the legal authority to conduct investigations of individuals or firms suspected of antitrust violations, independently or with the help of the judicial branch (figure 5). Although most of the countries surveyed have in place the legal and institutional framework for conducting investigations into antitrust behaviour, only two countries have done so in the last five years (Egypt and Tunisia). With the 2015 reform of Law No. 104-12 and the 2014 reform of Law No. 20-13, the Moroccan Competition Council (MCC) gained the necessary legal and procedural powers to investigate, sanction and remedy antitrust infringements, having previously had a consultative role only, which may explain the absence of investigations and sanctions by it in the past five years.

Algeria and Yemen have also not conducted any investigations in the last five years, and the legal framework limits certain elements of their investigative process. The challenges that the region faces in competition practice are not (or at least not entirely) related to the legal framework, but rather to compliance to norms on competition (e.g., enforcement) and to applying institutional and legal directives to investigate proactively.

**Figure 5. CLP indicator - Powers to investigate**



**Source:** ESCWA calculations; OECD figures from (Alemani and others, 2013).

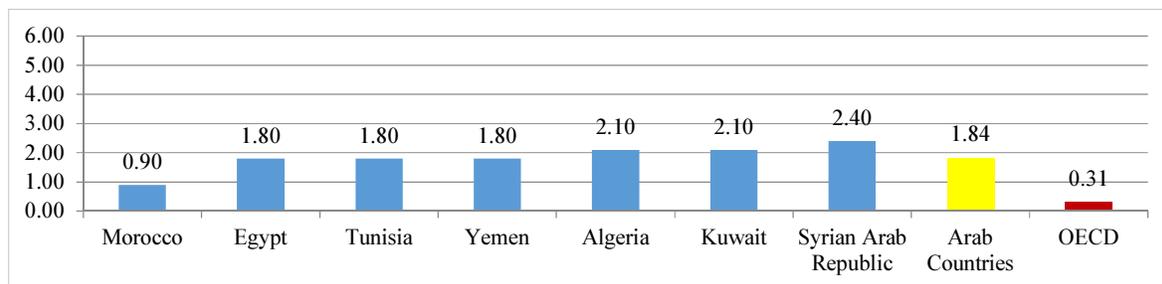
**Note:** Scale: 0 to 6 from most to least conducive to competition.

<sup>4</sup> See for example (Karier, 1993; Lin and Li, 2009) on the role of monopolies for potentially developing certain types of markets as well concerning their effect on impeding further development.

### C. Powers to sanction/remedy

This indicator assesses the legal framework, in terms of its capacity to enable competition authorities towards issuing sanctions or imposing necessary remedies on firms and individuals committing antitrust infringements. The Arab region faces many challenges in this respect, with the legal framework, as well as with compliance with procedure. With few exceptions, the countries surveyed have a limited ability to sanction or impose remedies on individuals and firms that are in breach of antitrust regulations (figure 6). Most of countries surveyed had limited ability to impose remedies on firms that have committed an antitrust infringement. The Algerian, Kuwaiti, Syrian, Tunisian, Yemeni, competition authorities can only impose remedies in certain cases, while Egyptian and Moroccan competition authorities may do so in all circumstances.

**Figure 6. CLP indicator - Sanctions/remedies**



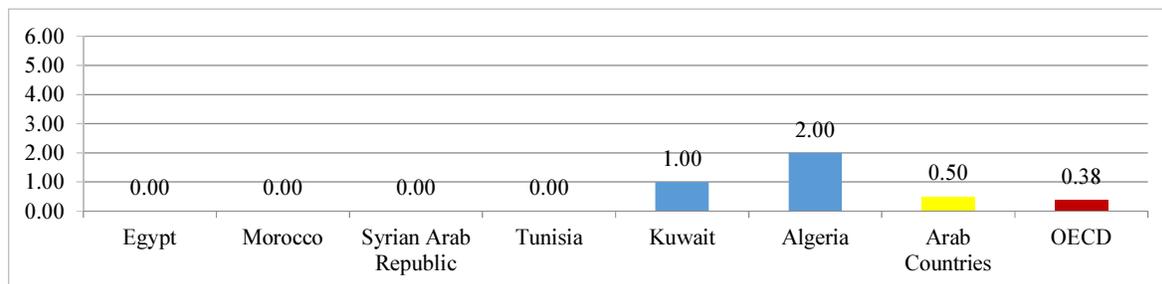
**Source:** ESCWA calculations; OECD figures from (Alemani and others, 2013).

**Note:** Scale: 0 to 6 from most to least conducive to competition.

### D. Private enforcement

This indicator evaluates the ability of individuals and firms to seek damages from firms that have committed antitrust infringement. With few exceptions among the respondents, Arab countries offer such legal recourse. Indeed, the regional score is very close to the OECD average (figure 7), indicating a sound legal framework protecting the rights of individuals and firms. However, the results need to be placed within the overall context of implementation, as actual cases of private enforcement may be very rare.

**Figure 7. CLP indicator - Private enforcement**



**Source:** ESCWA calculations; OECD figures from (Alemani and others, 2013).

**Note:** Scale: 0 to 6 from most to least conducive to competition.

## III. Policy on anticompetitive behaviour

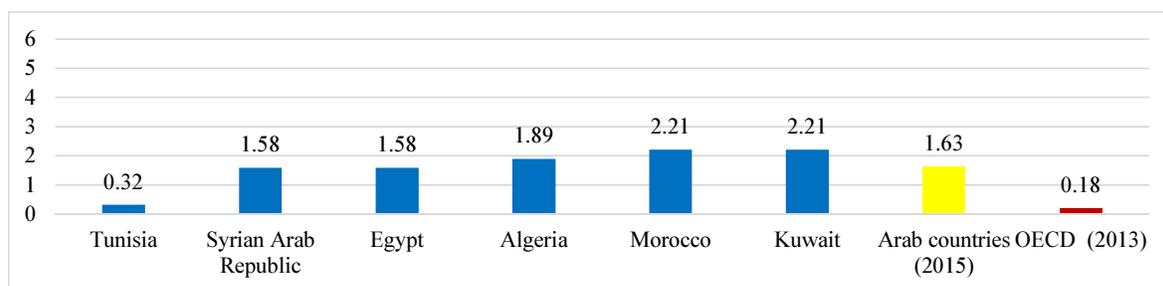
This, the second composite indicator, assesses policy towards collusion and exclusion, including the legal and policy frameworks of the regimes of the country in relation to mergers, horizontal agreements, and vertical agreements, as well as policy vis-à-vis exclusionary conduct. Effective implementation and enforcement

against anticompetitive behaviour ensure market efficiency and protect consumers from the effects of collusion and price rigging.

The aggregate scores for the Arab countries surveyed highlight policy gaps in comparison to the OECD average (figure 8). Tunisia appears to have the most effective policies on anticompetitive behaviour, while Egypt’s score seems heavily influenced by its policy on mergers, which appears to be the least conducive to effective competition among the constituents of this aggregate indicator.

In terms of policies on vertical agreements and exclusionary conduct, the scores of the Arab countries approach the OECD average. This means that policy reforms have to address gaps in national legislation that may be political, rather than economic, in origin. Indeed, it would be helpful to study in-depth the experiences of the various countries to ascertain how effective sanctions and remedies have been in contributing to economic development and market efficiency

**Figure 8. CLP indicator - Policy on anticompetitive behaviour**



**Source:** ESCWA calculations: OECD figures from (Alemani and others, 2013).

**Notes:** (a) Scale: 0 to 6 from most to least conducive to competition; (b) Yemen did not respond to any section under this indicator.

## A. Mergers

Over the past two decades, merger-and-acquisition (M&A) transactions in the Middle East and North Africa region have grown steadily in value and number.<sup>5</sup> Leading the region are the GCC countries, which, unfortunately, have not contributed to the survey. Merger of the Safat Energy Holding Company and the Danah Al Safat Foodstuffs Company in Kuwait, worth \$2,029 million, and the acquisition of Holcim Maroc by Lafarge Cements in Morocco, worth \$1,021 million, are indicative of the M&A trend in the region.<sup>6</sup> Regulation of M&A activity is necessary for addressing issues of market concentration and domination, while safeguarding opportunities of economies of scale and scope.

With the exception of the Egyptian Competition Authority, all the competition agencies surveyed maintain some form of control over M&A (figure 9). The Egyptian Competition Authority has to be informed of all M&A transactions, but may not evaluate, nor approve, them.<sup>7</sup> Generally, mergers are approved by the various competition councils following an investigation and analysis into their possible effects. However, merger regulation and legislation in the region remains comparatively relaxed. Though merger guidelines vary across the region, there is a tendency to limit M&A to key sectors, such as telecommunications and energy, in which

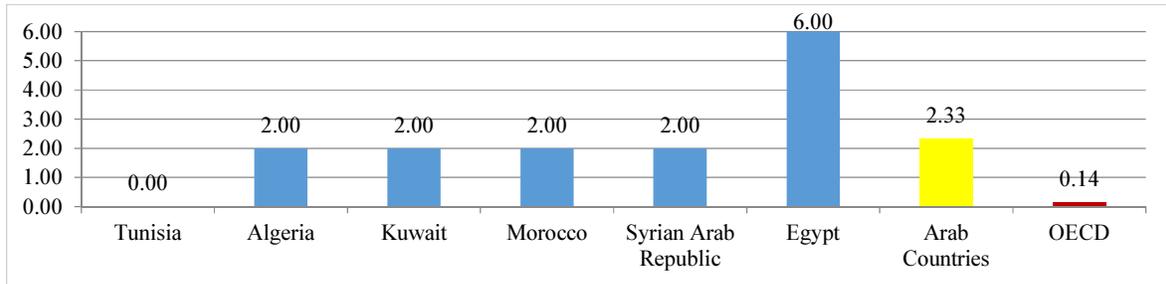
<sup>5</sup> Institute for Mergers Acquisitions and Alliances, 2016.

<sup>6</sup> Bureau Van Dijk, 2016.

<sup>7</sup> See Article 11 (2) of Law No. 3 of 2005 on the Protection of Competition and the Prohibition of Monopolistic Practices.

the respective government maintains a national interest. Most competition regimes set a merger threshold between 30 and 40 per cent in order to limit monopolistic takeovers and concentrations.<sup>8</sup>

**Figure 9. CLP indicator - Mergers**



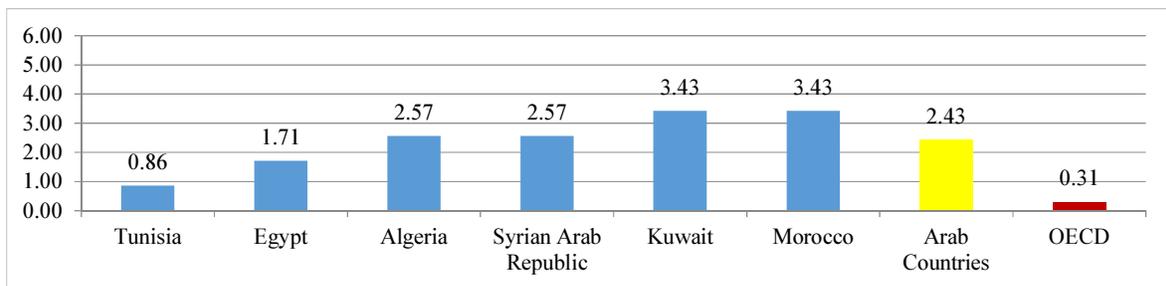
**Source:** ESCWA calculations; OECD figures from (Alemani and others, 2013).

**Note:** Scale: 0 to 6 from most to least conducive to competition.

### B. Horizontal agreements

Competing firms enter horizontal agreements to set or fix prices higher than they would be if the firms had to compete in transparent markets. Horizontal agreements also facilitate the sharing of information on technologies or products. Among the Arab countries responding to the survey (figure 10), all prohibit horizontal agreements, though most have not sanctioned or imposed fines on this form of anticompetitive behaviour in the last five years. In all responding countries, decision-makers conduct economic analysis of the competitive effects of horizontal agreements and could (except in Morocco) consider positively potential efficiency gains through such arrangements, except if the case is one of cartel formation. In the specific case of cartels, in the last five years Egypt, the Syrian Arab Republic and Tunisia have imposed sanctions on cartels within their jurisdiction, but only Tunisia sanctioned cartels outside immediate jurisdiction. Most Arab countries have the option of applying leniency programmes to the resolution of cartels, but none has applied any such programme in the last five years.

**Figure 10. CLP indicator-Horizontal agreements**



**Source:** ESCWA calculations; OECD figures from (Alemani and others, 2013).

**Note:** Scale: 0 to 6 from most to least conducive to competition.

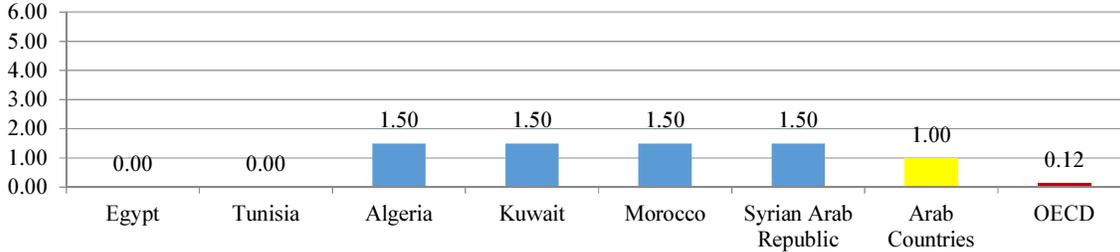
### C. Vertical agreements

Vertical agreements are anticompetitive agreements made between firms at different stages of the supply chain, usually offering price advantages to the firms involved (e.g., distribution agreements, supply agreements). The

<sup>8</sup> Morocco, Saudi Arabia and Algeria have set their merger thresholds to 40 per cent of the market, while Kuwait and Tunisia have the threshold set at 35 per cent and 30 per cent respectively. (Abdelly and Associates, 2016; Ghellal and Raoui, 2007; Barakat and Batwala, 2014; Cunha, 2015; Nelson, 2013; Habachi and Bakouuchi, 2015).

average score for Arab countries is very close to the OECD average: in practice, all necessary policies are in place but the score is influenced by non-application of sanctions and/or remedies within the respective jurisdictions in the last five years (figure 11).

**Figure 11. CLP indicator - Vertical agreements**



**Source:** ESCWA calculations; OECD figures from (Alemani and others, 2013).

**Note:** Scale: 0 to 6 from most to least conducive to competition.

Anticompetitive vertical agreements are illegal in all the surveyed Arab countries. Consistent with considering efficiency gains by means of horizontal agreements, economic analysis by competition authorities considers whether vertical agreements generate market efficiency. Except for Egypt and Tunisia, no responding competition authority has imposed sanctions on or remedies for anticompetitive vertical agreements in the last five years.

#### D. Exclusionary conduct

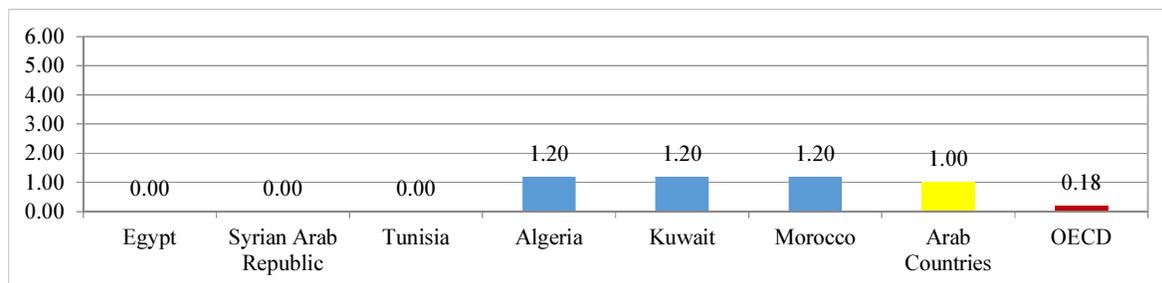
Exclusionary conduct refers to anticompetitive practices whereby a firm maintains or acquires monopolistic power, not by business development or native company growth (e.g., product superiority) but by deliberately disadvantaging and harming competitors. The Arab competition policy regimes surveyed uniformly prohibit exclusionary conduct by dominant firms and/or by firms with substantial market power within their jurisdiction (figure 12). Across the countries, policies on exclusionary conduct are in line with international standards. Differences with the OECD score are explained by the different responses as to whether decision-makers imposed sanctions and/or remedies on at least one firm for exclusionary conduct over the past five years: Egypt, the Syrian Arab Republic and Tunisia appear to have done so, while Algeria, Kuwait and Morocco have not.

With the objective of improving consumer welfare and from a developing-country perspective, it is important to recognize that the legal discussion concerning exclusion is controversial. Managing the tension between harm to competitors and harm to consumers has “created longstanding controversy regarding the proper legal standards to govern exclusionary conduct. Even where harmful conduct is identified, critics suggest that enforcement will end up deterring other conduct that is beneficial to consumers”.<sup>9</sup> In a region with large family businesses of great importance,<sup>10</sup> as well as State-owned enterprises and specific cultural norms that are reflected in business practices, such considerations are crucial for effective competition policy.

<sup>9</sup> Salop, 2010, p. 312.

<sup>10</sup> ESCWA, 2015, p. 59. Only 40 per cent of the ten largest family businesses are publicly listed.

**Figure 12. Competition indicator for selected countries - Exclusionary conduct**



**Source:** ESCWA calculations; OECD figures from (Alemani and others, 2013).

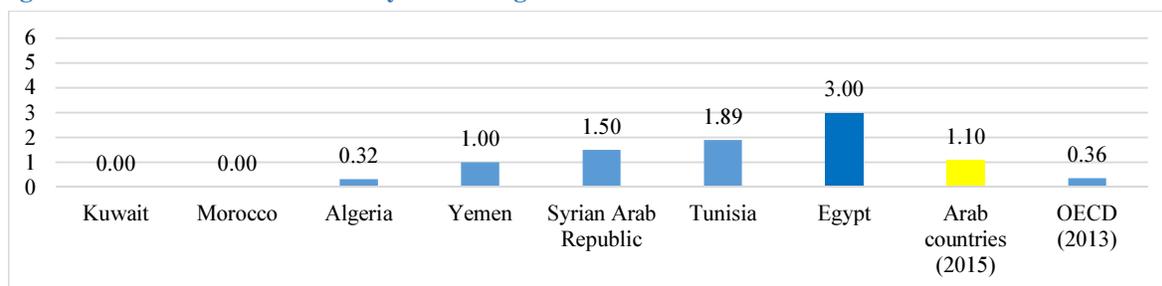
**Note:** (a) Scale: 0 to 6 from most to least conducive to competition.

#### IV. Probity of investigation

Competition regimes in the region face multiple challenges, including establishment or maintenance of institutional independence. Given that the notion of necessary regulatory policy and reforms remains a relatively new concept in the Arab countries, gradual implementation of effective regulatory policies abiding by good governance standards has to be tailored to the national political, economic and social contexts. As said, many countries have formulated and implemented competition and antitrust legislation. However, conflict arises often when agency and responsibility between the over-arching and the sectoral institutions are not clearly defined, rendering enforcement of competition policies particularly challenging.

The aggregate indicator on “probity of investigation” relates questions of good governance (e.g., accountability and procedural fairness) to issues of institutional independence, since these challenge effective application of competition legislation, which has to be negotiated at the national level and within the specific context of the Arab region (figure 13).

**Figure 13. CLP indicator - Probity of investigation**



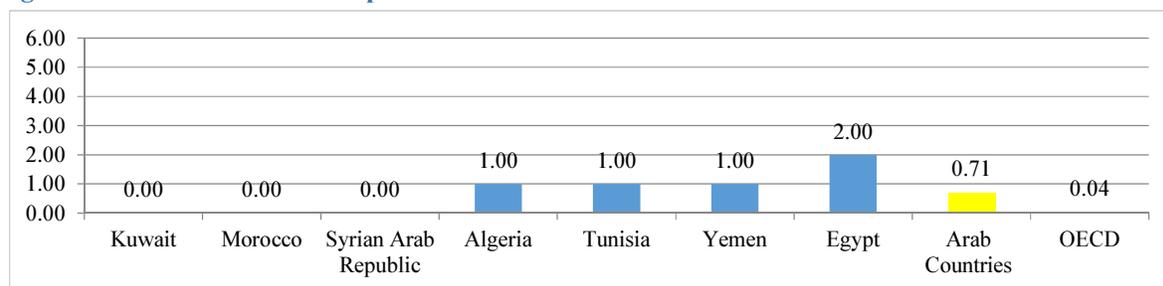
**Source:** ESCWA calculations; OECD figures from (Alemani and others, 2013).

**Notes:** (a) Scale: 0 to 6 from most to least conducive to competition; (b) The result for Yemen is based ONLY on the responses to one out of three sections namely “Independence”.

##### A. Independence

Institutional independence is important for avoiding conflict of interest and ensuring objectivity of analysis of socioeconomic impact of antitrust matters. Competition authorities in OECD member countries appear to be almost perfectly functionally independent from other institutions (e.g., budgetary independence), while competition authorities in the Arab region appear to have a lesser degree of freedom from involvement of government and/or specific ministries (figure 14). In none of the responding countries, government or ministers have given binding instructions on whether a competition authority should open an investigation on an alleged antitrust infringement or impose sanctions. However, in Egypt, the Government or ministers have given at least once binding direction to the Egyptian Competition Authority (ECA) to close an investigation.

**Figure 14. CLP indicator - Independence**



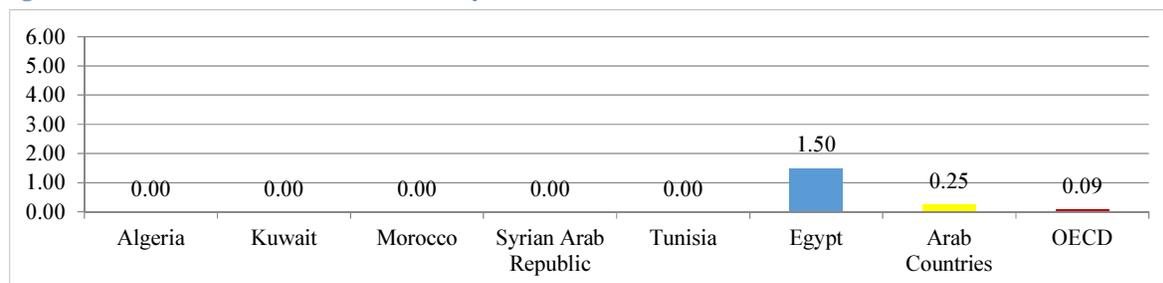
**Source:** ESCWA calculations; OECD figures from (Alemani and others, 2013).

**Notes:** (a) Scale: 0 to 6 from most to least conducive to competition.

### B. Accountability

Effective accountability mechanisms in place ensure that market participants have confidence in the work and rulings of the competition authority. All surveyed Arab countries assert that their competition authorities regularly publish activity reports, as well as decisions on antitrust infringements; hence the close proximity of the average Arab countries score to the OECD average (figure 15). Unfortunately, the survey questions do not allow qualification of response in terms of audience (e.g., closed and only available to Government, or open and publicly available for anyone interested). Decisions to block or clear a merger transaction are published in all countries, but Egypt. In any case, competition regimes in all responding Arab countries offer the possibility of judicial review of the substantive matter of antitrust decisions (e.g., in Algeria, such a decision may be appealed to the highest administrative court, “Conseil d’Etat”).

**Figure 15. CLP indicator - Accountability**



**Source:** ESCWA calculations; OECD figures from (Alemani and others, 2013).

**Note:** Scale: 0 to 6 from most to least conducive to competition.

### C. Procedural fairness

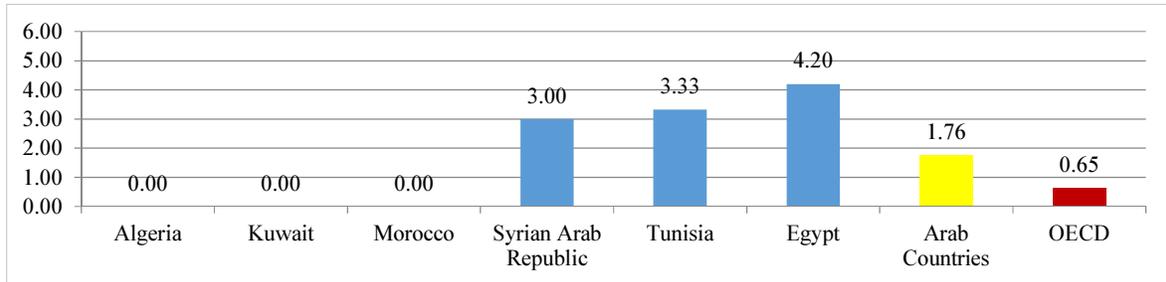
Competition authorities in all the Arab countries that participated in the survey provide firms under investigation for an antitrust infringement with opportunities to consult on significant legal, factual or procedural issues during the course of investigation. Furthermore, firms under investigation also have the right to be heard prior to a decision on sanctions or remedies for antitrust infringements.

The case is different when mergers are considered. Egypt is the one and only example where these two elements considered as not applicable, which explains its relatively high score for this indicator. Egypt also does not publish administrative guidelines to explain how monetary sanctions for antitrust infringements are set and/or recommended to a court, if involved. Hence, addressing these issues to enable a consultative function for the Egyptian Competition Authority could be placed on the reform agenda in Egypt.

With the exception of the Syrian Arab Republic and Tunisia, responding Arab countries publish procedural guidelines and/or make documents publicly available to explain their investigative approach and decision-

making processes. Furthermore, both countries, as well as Egypt, do not explain their approach towards assessment of abuses of dominance, horizontal and vertical agreements, and mergers. Consistent with other previously discussed indicators, the different levels of discretionary decision-making are due to the political, economic and social contexts of the different countries.

**Figure 16. Competition indicator for selected countries - Procedural fairness**



**Source:** ESCWA calculations; OECD figures from (Alemani and others, 2013).

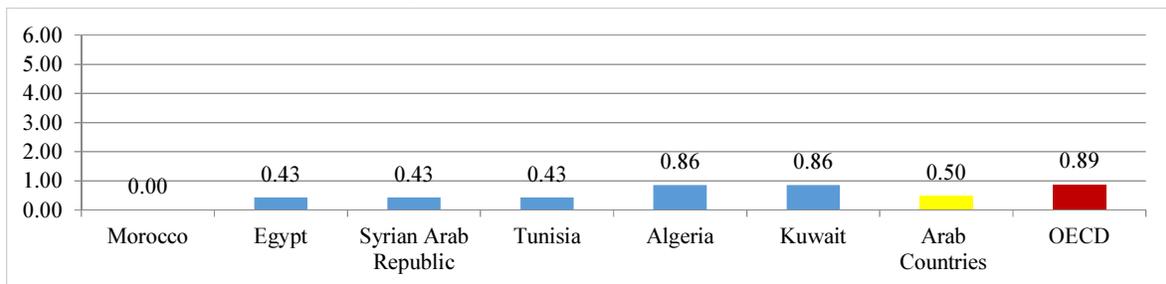
**Note:** Scale: 0 to 6 from most to least conducive to competition.

## V. Advocacy

Effective advocacy of the benefits of competition legislation for firms and individuals, as well as for livelihoods, contributes to understanding its positive effects on the availability, quality and prices of goods and services. Public awareness and existence of a competition culture ensure the functioning of markets and encourage continuous improvement to competition practice, associated legislation and norms. At the global level, many organisations, such as the International Competition Network, engage in advocacy, while others link advocacy for effective implementation and enforcement of a competition policy regime to a broader policy agenda on economic development (e.g., World Trade Organisation). In the Arab region, the League of Arab States and the Gulf Cooperation Council – the latter in particular, with its unified draft of a commercial policy law – are active in advocacy, in conjunction with the national competition authorities.

The responding Arab competition authorities evince a strong commitment to advocacy in their scope and quality of engagement, at the regional, national and local government levels. They also ensure that newly conceived public policies that may have implications for competition are assessed within the limits of their jurisdiction and that necessary market/sectoral studies are undertaken to support broader policy decisions. The studies conducted by competition authorities offer recommendations to government, suggesting amendments to or removal of competition-relevant policy obstacles. Such recommendations are often taken into account by the bodies formulating public policy. Morocco is very consistent on this issue, while the governments of Algeria and Kuwait choose not to comment on or respond to recommendations.

**Figure 17. CLP indicator - Advocacy**



**Source:** ESCWA calculations; OECD figures from (Alemani and others, 2013).

**Notes:** (a) Scale: 0 to 6 from most to least conducive to competition; (b) Yemen did not respond to the questions under “Advocacy”, hence it is not included.

## VI. Summary and findings

The present paper summarizes the finding of the survey on competition policy strength in Arab countries. For this first-of-a-kind analysis, ESCWA used the established OECD instrument to complement the existing global dataset on competition policy and to provide decision-makers in the Arab countries with a reference measure for achievements and gaps related to competition policy, legislation and institutional structures. Building on the 2013 OECD study on Competition Law and Policy, the ESCWA survey applies the same indicators, seeking to assess the scope, legal framework and enforcement capability of competition regimes in the Arab region. Results concerning individual indicators, as well as results from a basket of indicators, support evidence-based decision-making and allow targeted improvements. For example, comparison of indicators over time (for example, Egypt's results in 2013 compared with those in 2015) may show the trend of national competition policy strength, given due consideration of national political, economic and social context.

With the sole exception of Egypt, countries included in this regional analysis have not been covered by the OECD survey of 2013. Given the lack of regional indicators and comparative data on competition, the ESCWA survey on the *Strength of Competition Policy and Regulation in the Arab Region* seeks to address the data deficit and establish a knowledge baseline for Arab countries, thereby facilitating policy improvement, as well as stimulating dialogue on the importance of effective competition policy for socioeconomic development.

The results of the survey discussed in the previous chapters highlight that there is a clear push towards the development of competition regimes in the region and that the efforts in the Arab region are strong in comparison with the OECD average. The legal and procedural frameworks underpinning national competition policy have seen multiple reforms in the past decade, increasing the scope of the activity, as well as the investigative and enforcement powers, of the competition authorities in the region. Spearheaded by reforms in Egypt, Morocco, Tunisia and other countries are beginning to re-evaluate the role of antitrust regulation. This trend is supported by very active participation in international and regional organizations, such as the World Trade Organization (WTO), the International Chamber of Commerce (ICC), United Nations Conference on Trade and Development (UNCTAD) and the Marchfeld Competition Forum (MCF), as well as through multilateral agreements, like the European Union Association Agreements.

Nonetheless, the survey also shows the need for improvement in terms of independence of competition authorities and procedural fairness, as well as enforcement concerns. With the exception of Tunisia, the countries covered by this study have not investigated or imposed sanctions on antitrust infringements related to mergers, horizontal and vertical agreements, or exclusionary conduct. Most of the competition authorities surveyed are nominally independent, though subject to government interference in certain aspects of the decision-making, and investigative and sanctioning processes. Furthermore, issues of transparency and fairness in the application of antitrust measures have been observed. Decisions on antitrust infringement are often not disclosed, while the publication of investigative and decision-making processes is limited in a number of countries.

In the broader context of economic governance, the paper testifies to the commitment of some Arab countries to establishing better policies. It is hoped that the paper would contribute to building a sustainable and fair "competition culture" to the benefit of all people in the Arab region.

## Annex I

### Report of Expert Group Meeting on Competition legislation and regulation – challenges and opportunities in the Arab Region, 8 and 9 December 2015, Beirut

#### Background

To continue under its regular work programme, the Economic Governance and Planning Section at ESCWA /EDGD undertakes a series of activities on the topic of “Measuring Economic Governance in the context of National Development Planning” by focusing on the role of competition policy and regulation in the Arab. The expert group meeting held on 8 and 9 December 2015 in Beirut (draft agenda below) continued the policy conversation started at the ESCWA Expert Group Meeting on the subject in June 2014. The meeting also served as a platform to review the stocktaking analysis (e.g. Launch of the report) and to agree on a way forward.

The objectives of the meeting included:

- To discuss key challenges related to the implementation of effective competition policy and regulation regimes in the Arab region;
- To identify and prioritise necessary key measures to improve existing competition policy frameworks to support development (e.g., in view of achievements related to the post-2015 Agenda and the formulation sustainable development goals);
- To share experiences, international and regional best practice examples and lessons learned;
- To develop practical recommendations for next steps that lead to the design of relevant activities to implement the recommendations.

#### Summary of discussions

##### Opening Session – Keynote Address and Launch of the Report “Economic Governance Series: Competition and Regulation in the Arab Region”

On behalf of HE Alain Hakim, Minister of Economy and Trade in Lebanon, Mr. Jean Tawile, Economic Advisor to the Minister of Economy and Trade addressed the meeting with a substantive keynote speech. The speaker stressed the need to address monopoly structures that are not beneficial to citizens and the necessity to implement effective laws and regulatory frameworks that govern competition. During the opening speech, he stressed that Arab countries that have not adopted competition laws yet can learn at the meeting as it “is the main objective of our meeting today with the presence of local and regional experts to discuss some Arab countries’ legislations, the challenges they face and how to improve them”.

The aim of these legislations is to achieve economic and social justice, to enhance competitiveness among traders, allowing them to overcome barriers-to-market-entry regardless of their field of practice. In turn, this will allow clients to demand goods and services, offered at best conditions. From this standpoint, the Lebanese Ministry of Economy and Trade in Lebanon has submitted a draft law about competition aiming at strengthening competition, on the 20th of July 2012. This law should: (1) protect the rights of trades and consumers, (2) ensures the productivity, creativity and technical progress of the firms, (3) reinforce investments and make the market more attractive and competitive. To date, however, the draft law and other laws, are affected by political situation in Lebanon and therefore not implemented. The Ministry of Economics and Trade of Lebanon works strongly towards achieving the “Roadmap 2020”. This roadmap encourages the establishment of SMEs as they are considered one of the main components of the Lebanese economy (96 per cent of all firms). Furthermore, the Ministry is working also towards Lebanon’s accession to the WTO and is

aware, that effective regulation and completion will secure economic activities, increase productivity and fight poverty. The release of economic constraints pushes the Arab countries to improve their legislation policies.

Following the opening speeches, ESCWA publicly launched a comprehensive report on competition policy and regulation in the Arab region. The publication “Economic Governance Series: Competition and Regulation in the Arab Region” focuses on the benefits and importance of effective antitrust and competition laws as well as the need for well-functioning market regulators in the Arab region to enhance business environment, foster investments, improve economic performance and drive growth. As the issues of competition and regulation are linked and shortcomings in the past aggravated the challenges associated with inefficient market structures and governance systems (e.g. Heavily concentrated and inefficient economies, collusion, centralization of economic power among a few elites, and general rent-seeking behaviour in the Arab States), the report provides an assessment of the status in the region and highlights major challenges: drafting, adoption and enforcement of legislation, the different models pursued by individual countries in terms of structuring the relationship between competition and regulation authorities, exemptions and so on.

The report concludes with policy recommendations that target the improvement of the relationship between competition concerns and effective sectoral regulations as well as recommendations towards enhancing effectiveness of competition enforcement and institutional designs of antitrust and market regulators regimes. It also encourages the need to leverage existing initiatives addressing competition and antitrust reform for the Arab Region – international efforts, such as UNCTAD, IMF and OECD as well as regional efforts (GCC template for uniform competition and antitrust legislation) to clarify possible institutional partners for policy reforms.

The report has been made available for download here: <https://www.ESCWA.org/publications/economic-governance-series-competition-and-regulation-arab-region>.

### **Session 1 – The current state of competition legislation and regulation in the Arab region and beyond**

The first session of the Expert Group Meeting set the stage and provided an overview on the current state of competition legislation and its impact on regulation in the MENA region. Specific opportunities (e.g., potential for a regional competition law) and challenges (e.g., enforcement) will be considered. Main questions guiding the discussion included:

- What is the current state of competition legislation and its impact on regulation in the MENA region?
- Details on specific country examples, Tunisia and Egypt, and how does competition legislation fit into the broader legal and development framework of the country?
- What were important lessons learned during the process of adoption of competition legislation and how can other countries in the region benefit?
- What are the current challenges vis-à-vis competition policy and regulation (i.e., relationship to sectoral regulation)?

Presentations:

- Dina Waked, Professor in Global Economic and Comparative Law at Sciences Po;
- Habib Jaballah, President, Competition Council of Tunisia;
- Dr. Mona ElGarf, Chairperson, Egyptian Competition Authority.

Dr. Waked presented the challenges regarding the Competition Law Enforcement in the Arab region in terms of: drafting a law, law enforcement, the influence of the surrounding environment, and the role of sectoral bodies. She provided advice on the need for a sound Competition Policy Framework to focus on using competition regulations as part of a development agenda, balancing competition laws with necessary industrial

and trade policy, and redefining the often conflicting broad goals into one clear national development goal to be more efficient. She gave different examples from Saudi Arabia and the United Arab Emirates to illustrate the latter mentioned framework. Finally she concluded and added some recommendations such as reassessing the competition legislations to be more suitable for developing countries, consideration for the independence of authorities, to increase funding, and to improve on public awareness. She highlighted the fact that there is much to gain from regional cooperation: for example, involve UNCTAD competition and consumer protection program as well as tailor decision making to be more Arab-countries-specific so that it suits better the Arab market, rather than following the Western models that do not fit the situation of the Arab countries.

In his presentation Mr. Jaballah started with differentiating between a “Competition Policy” and a “Competition law”. He made the distinction between “anticompetitive practices” and “unfair competition”. A system with a comprehensive view should have two bodies to deal with the two types of practices. He presented the Tunisian experience that follows the system described above and specified that the Tunisian Competition Council is responsible for addressing the first type of malpractices, focusing on monitoring sanctions (i.e., on practices that have an impact on the performance of the economy) and commercial violations (i.e., related to trade). Whereas a second institution namely the Courts of Justice are responsible of the cases of unfair competition. Then he presented the Legal framework and the Institutional framework, and stressed on the importance of re-regulating competition and updating the laws periodically. With respect to the question on institutional independence, Mr. Jaballah stated that councils can not be 100 per cent autonomous as they operate under Governmental guidance in terms of budget and in terms of having the ministry as a partial stakeholder. There is awareness however, that it could be both a conflicting party and an important actor.

Dr. ElGarf started her presentation by summarizing the ten years of the country’s experience within the ECA framework (Egyptian Competition Authority). She presented the Egyptian case study and its vision as to “Why there was a need for Egyptian competition law and policy?” that leads to the strong institution of today. The situation in 2005 was the essence of 35-years-inheritance of laws and provisions that were very obsolete, which lead to many monopolies on the market and dominant enterprises across the sectors. She introduced the vision and mission of ECA that guides the institution: (1) The vision is “to be key instrument for ensuring free competition in the market and prohibiting anticompetitive practices, in order to serve producer and consumer interests and enhance efficiency of national economy”; and (2) their mission refers “to set, apply and develop free competition rules in addition to improving economic environment and promoting consumer welfare through disseminating competition culture and ensuring the provision of high quality, low price, and diverse products”. She presented the objective, the strategy and the organizational chart of ECA as well as the decision making process. Then she introduced the main features of the Egyptian Competition law, its scope and the amendments. In addition she provided figures and information about filed cases. The achievements and challenges of ECA were presented as well.

The discussions that followed the presentations focused on law enforcement, transparency, independence and effectiveness of the institutions, which can have different formal expressions in reality. For example, there was general agreement on the importance of independence of competition authorities, but it does not necessary mean that despite a nominal dependence to the government it would interfere (e.g., in the case of the United States the President who has the right to but never interferes with the competition agency’s processes and decisions). The discussion also highlighted that competition authorities need to prioritise with their scope of activity given limited resources and that there is a need for dialogue between the government, the public and the private sector to facilitate independence and trust in the work of the agency (striking a balance between being sufficiently distant from government for independence but sufficiently close to it to be able to see the needs of the public implemented).

## **Session 2: The private sector perspective on regional and international competition**

The second session invited the private sector on effective competition policy and regulation. The purpose is to identify requirements and conditions for competition policy to enable inclusive and sustainable economic

growth at the national and regional level (e.g., relevant for start-up industries, transport industries and so on). Presentations and discussion revolved around the following points:

- What are the most pertinent legal obstacles for the private sector and what conditions/steps would be necessary to facilitate effective competition (e.g., market participation of start-ups, participation in global transportation value chains)?
- How can the private sector contribute towards drafting, implementing and enforcing competition legislation?
- Why is it necessary to bring together “governmental organizations into partnership with the private sector to eliminate regulatory and legal obstacles” and how does/can that happen?
- What role does regulation or the absence thereof play?

Interventions by:

- Abdul Wahab Teffaha, Secretary-General, Arab Air Carriers’ Organisation;
- Toufiq Soudayha, Managing Partner, Alem & Associates;
- Abdallah Jabbour, Managing Director, Lebanon for Entrepreneurs (LFE).

Mr. Teffaha gave an account about the worldwide aviation competition, which differs from other sectors as they are mostly owned by governments. European Union and Arab airlines operate in accordance to the law of the land. Competition laws specifically addressed to the aviation sector are nascent, being developed but not yet done and applied. Airlines operate in accordance to the commercial laws and not government. The new thinking in the aviation sector is to try to introduce competition laws in the objective of shrinking competition and preventing competition against the local aviation companies. He gave different examples about situations in the aviation industry ranging from Lebanon to Dubai, United Arab Emirates, the United States, Asia and the European Union. To illustrate the difficulties within the airline industry, he emphasized on the different understandings of ‘fair-skies’ and ‘open skies’ agreements (instead of an open market access (open-skies), ‘fair’ is a relative assessment and depends on the point of view, i.e., from the American or European perspective onto the Arab carriers).

In his intervention related to the banking and finance sector, Mr. Soudayha pointed out that is a lack of laws that promote competition in the Lebanese banking sector and the industry uses instead some old law that still applies and that prevents international players from entering the market. For instance, there is a restriction on foreign banks that allows a maximum of 7 branches on the Lebanese territories. This provision has prevented many international banks from entering the market and prevented effective competition with local banks, which in turn affects the level, breadth and quality of service for the consumers. In the case of mergers and acquisitions regulations, there are no written considerations for cartels and antitrust however there appears to be an informal understanding that big market participant remain unchallenged and would not merge, unless with smaller market participants.

Mr. Abdallah Jabbour, Managing Director of Lebanon for Entrepreneurs (LFE), gave a brief description of LFE that works as an advisor for Lebanese technology start-ups. He reported that technology start-ups in Lebanon are not faced with much competition, especially that the Lebanese market is not their main target being too small, and there are no meaningful barriers to market entry. He also indicated that the challenges faced by these start-ups are mainly related to telecom environment that governs those start-ups (mainly the broadband). Concerning the legal framework, Law 431, passed in 2002, created the Telecom Regulatory Authority (TRA) whose main role is to regulate the telecom market according some policy that is set by the ministry of telecommunication in Lebanon. TRA was mandated to protect consumers, analyse the market and take any necessary actions to promote competition. However, this law was never implemented nor enforced. He pointed out that what is even more problematic is that Ogero, the monopole of the fixed telecommunications

network in Lebanon, is owned by the State and works on behalf of the Lebanese Ministry of Telecommunications.

Open discussion among the participants during this session evolved around the necessary regulatory and legislative changes to facilitate a competition environment in different sectors. While some sectors face little market-entry barriers, other have substantial entry barriers. For this reason, also improvements in other areas of legislation and regulation are necessary to facilitate functioning markets (e.g., the adoption of new laws for the telecom sector and a better management for airlines, consideration on whether ‘fairness’ as criteria should be applied).

### **Session 3: The public sector view on national and regional competition policy**

The session elicited the public sector view on national and regional competition policy. It discusses challenges for drafting and enforcing competition legislation challenges. The discussion will also highlight requirements and dispositions made related to strategic industries, State-owned companies, family companies, free zones and so on, which are prevalent in the Arab region.

Guiding questions:

- What is the experience of competition authorities when it comes to their scope of influence vis-à-vis the public sector (i.e., on strategic industries, State-owned companies, family companies, free zones and so on, which are prevalent in the Arab region)?
- How do public sector entities engage with competition authorities?
- In the absence of existing competition legislation, how are anti-trust matters addressed substantively and institutionally?
- What do specific exemptions from competition legislation mean for overall national development?

Presentations delivered by:

- Abdelali Benamour, President of the Competition Council of Morocco;
- Mohamed Teghre, Technical Advisor to the Minister of Economic Affairs and Development, Mauritania;
- Saadi Boumediene, Competition Council of Algeria.

Mr. Benamour detailed the experience of the competition authority in Morocco in view of the country’s economic structure and the challenges related to oligopolies (banks, supermarkets, cement, mobile telecom, etc.) and large informal sector with SMEs. The competitiveness of enterprises depends on the socioeconomic environment (e.g., justice reforms, education, labour codes and so on) and the enabling productive factors (e.g., costs of labour, access to energy). In terms of the authority’s scope of influence vis-à-vis the public sector, the experience in Morocco underlines their behaviour of public agencies which certain privileges (e.g., access to subsidies) and in order to act against anticompetitive practices, close relationships with the Government aim mainly at advocacy to reconcile objectives of competition policy regime with industrial policy. For example, recognizing the need for ‘champions’.

In reference to the authority’s relation with sectoral regulatory bodies, Morocco delegates competition relevant concern, but maintains an advisory role of the Competition Council to work towards more transparency. Furthermore, the Council recognize that there is still a lot to do towards increasing the public’s awareness of competition policy, its necessity and benefits. In its long-terms strategic approach (10 year strategy), the council reflects an evidence-based action plan that highlights priority sectors in the Moroccan economy

(“secteurs phares”), a plan to increase awareness of the public and media, as well as complementary partnerships of the Council with other institutions in the public and private sector.

Mr. Mohamed Teghre presented the outlooks of Mauritania vis-à-vis competition and the diverse laws dealing with competition. While Mauritania does not have neither dedicated competition legislation nor a competition authority, it appears many of the related concerns are dealt with in the Ministry of Economy.

Mr. Saadi Boumediene shared the Algerian country experience, which is unique given a ten-year hiatus period of the competition committee, and its reactivation with the new law in 2013 replacing the one from 1995 and addressing some practical gaps concerning aspects of economic control and aspect of repression. The so-called “black years” ended in 2013 by order of the President who appointed a new chair of the Competition Council. The chair has a number of roles and responsibilities: a consultative role on formulating legal texts related to economic competition or consumers’ welfare; a relationship role to maintain close and strong relationships with the national regulatory bodies as well as international bodies. Algeria ensures that the law would be applied very strictly, for example in 1999, the Competition Council in Algeria took a decision against a public company for electronics and against another public company in 1998 due to abuse of dominant position. The newly revived Council is still in a learning stage and pays a lot of attention to advocacy and media management to raise awareness for competition related issues among the public.

Following the presentations, the discussion among participants touched on the importance of the role of media and the need for communication support to bring across the benefits of an efficient competition regime. Furthermore, the question of independence was framed more realistically in the context of the Arab countries, as it seems that there is nominally a high level of independence, but in practice and given the intertwined nature of politics and economy, the level of independence is not as obvious. The discussion briefly mentioned the validity of exemptions for certain industries and public companies.

#### **Session 4: Competition policy and consumer welfare**

The session will explore how and to what extent antitrust measures are necessary to give competition the best change to drive innovation and growth. Furthermore, the discussion would take into consideration how to convince vested interests to cooperate during a transition towards effective competition regimes as well as how to involve consumers to actively use competition to their benefit (e.g., better quality, improvement of choices, behavioural changes).

Guiding questions:

- What role does the notion of “consumer welfare” play in drafting, implementing and enforcing competition legislation?
- How does a conflict-environment impact on the work of competition authorities and their ability to enforce competition relevant issues?
- What are tangible benefits to consumers resulting from effective competition policy regimes?
- How does the lack of an effective competition policy regime affect consumers?
- Are there mechanisms that allow consumers a voice towards influencing competition policy and regulatory practices? Any lessons learned for improving the participation of consumers?

Interventions by:

- Anwar Ali, General Manager, Competition and Anti-Monopoly Commission, Syrian Arab Republic;
- Zuhair Berro, President, Consumers Lebanon, Lebanon;
- Rita Daher, Ministry of Economy and Trade.

Mr. Ali introduced Syria's outlook on Competition policy and consumer welfare within a difficult political environment, given that the Syrian conflict continues in its fifth year. The Syrian Arab Republic has in fact two laws, one specific to competition and another on consumer welfare. He presented the objective of the policy, the processes and the Syrian market structure. Then he elaborated on the effects of competition laws and policies and their enforcement on consumers' benefits. He concluded by saying that competition law and consumer protection law should go hand in hand to realize consumer's welfare and this requires spreading the culture of competition and consumer protection by all means.

Mr. Berro provided an overview of the critical and structural economic challenges in Lebanon that are affected by the lacking legal framework: for example monopolies and oligopolies in almost all sectors of the Lebanese economy (banking, trade, construction, telecommunications and so on). The outcome of these comprehensive and clear monopolies has negative consequences on the Lebanese citizen in terms of the goods and services provided (lack of quality, limited choice). Prices of certain goods and services in Lebanon, as estimated by the World Bank and the European Union, are the highest in the region and it goes beyond the global average by about 25-30 per cent. One example discussed was the costs of generic medicine in Lebanon, which is far higher than in the region and in Europe.

As a civil society organization, Consumers Lebanon is working tirelessly to remedy shortcomings of existing legislations (e.g., Law 34 that support monopolies) and to support legal reforms. According to study by Consumers Lebanon 34 laws are not implemented, among which the consumers' protection law and one its main institutions is defunct (The Court for consumers' protection does not meet and did not yet start work). Another study compares consumers' protection in Lebanon and in Dubai: In Dubai the relevant department has 22 employees who imposed about 17,000 fines per year for consumer welfare violations. In Lebanon, officially 160 controllers are responsible to assess consumer welfare violations, however they imposed only between 200 to 500 fines per year, which shows their limited efficiency. The discussion also touched upon the related issue of tax evasion with major companies posting only losses to avoid the payment of corporate taxes.

The session concluded with a broad discussion on the influence of the political system and culture on the effectiveness of legal frameworks, their implementation and enforcement. The discussion confirmed the major role of civil society organization in raising awareness and in trying to influence political decision-making in the interest of consumers.

### **Session 5: Results of the survey on competition policy and regulation**

The session introduces for broader discussion the results of the primary data collection exercise in the Arab region that complements an international dataset and helps guide policy decisions. The results of the questionnaire provide insights on several sets of indicators: e.g., 'scope of action', 'policy on anticompetitive behaviours', 'probity of investigation', and 'advocacy' as well as 'competences', 'powers to investigate', 'powers to sanction and remedy', 'private enforcement', 'policy on horizontal agreements', 'policy on vertical agreements', 'policy on mergers', 'policy on exclusionary conducts', 'independence', 'accountability' and 'procedural fairness'.

The presentations addressed the following questions:

- What is the rationale for measuring the strength of competition regimes and the development of related indicators?
- How can such indicators help countries towards more effective competition regimes?
- With reference to the recent survey, what is the relevance of measuring the strength of competition regimes in the Arab region: What is the current state and where are gaps?

Presentations delivered by:

- Antonio Capobianco, Economist and Competition Policy Expert Directorate for Financial and Enterprise Affairs, OECD;
- Denise Sumpf, First Economic Affairs Officer, ESCWA;
- Hassan Berri, Competition Council, Morocco.

Mr. Capobianco gave a detailed presentation on the background and history on the emergence Competition Law and Policy Indicators (CLPIs) of the OECD during the last five years. The presentation touched upon the challenges in the phase of formulating the indicators and in terms of convincing member countries on the usefulness. He continued to explain the overall methodology employed, the achieved results and its limitations within the OECD context, and concluded with opening horizons in terms of improving CLPIs and their current use at the OECD and beyond.

In her presentation, Ms. Sumpf translated the methodological background to the Arab countries and explained the use of the OECD indicator instrument in the ESCWA survey on competition policy conducted in 2015. Except for Egypt, none of the other Arab countries had been assessed previously, so the current report establishes a baseline for Arab countries and showcases regional achievements. In addition, and repeated survey can allow for comparison of indicators over time may show the direction of national competition policy strength. To date, she emphasized that the results of the survey (currently available for six countries) can provide an instrument to policy makers for self-assessment and peer comparison within and beyond the Arab region.

In the context of the discussion on the Results of the survey on competition policy and regulation, Mr. Berri of Morocco presented his experience on completing the survey and explained in detail the Moroccan experience in the field of advocacy, which was one of the indicators covered under the survey.

Towards the end of this session, a constructive yet critical discussion ensued on the importance and the value of indicators (i.e., quantitative measurements). The participants drew awareness to a number of concerns, for example: i) the indicators have little to do with enforcement, even though this is the best we can measure to date; ii) comparison may be helpful but also harmful, because the comparison of Arab countries with OECD countries could led Arab countries to adopt same jurisdictions as the OECD or the conventional jurisdictions even though this may not be the best law to adopt in regards to their economic situation and in order to enhance growth in Arab countries.

### **A path for the future – Priorities for effective regional competition policy**

The final session of the Expert Group Meeting returned the discussions of the two day meeting back to the initial objects. Based on the format of an open platform for discussion (in two break-out groups), the session took stock of content of the meeting discussions and the survey results presented. The purpose of this session was to develop practical recommendations leading to the design of activities that support the improvement of competition policy and regulation in the Arab region. The first group comprised Competition Councils Representatives whereas the second group, experts on Competition from different international organizations and representatives of civil societies. Within the format of their break-out group, participants framed practical recommendations for next steps and pondered a set of guiding questions:

- What are the needs of the Arab countries vis-à-vis drafting, implementation and enforcement of competition regulation?
- What role can ESCWA, as regional commission, play to support the countries? What kind of activities we can develop with you for the next 2-3 years?

- How can ESCWA specifically support member countries in the field of competition policy and regulation (i.e., capacity-building requirements)?
- What could a regional roadmap look like (e.g., is the GCC model law a viable option)?
- What kind of collaboration between civil society and competition council can take place?
- What is the notion of Fairness? And what are the aspects of consumers' welfare? How to reflect these best in a competition policy regime?

The meeting brought together a broad based of stakeholders (representatives from Arab countries and their respective competition authorities, academics as well as civil society representatives and representatives of international organisations) to share experiences, international and regional best practice examples and lessons learned. The meeting succeeded in discussing key challenges related to the implementation of effective competition policy and regulation regimes in the Arab region and in identifying as well as prioritising necessary key measures to improve existing competition policy frameworks in support of economic development.

The recommendations of the participants on the way forward refer to different levels of intervention:

*General recommendations*

- Increase awareness raising efforts towards convincing the government, the public and economic actors of the benefits of competition law enforcement and advocacy;
- Promote regional cooperation to exchange knowledge and to provide recommendations;
- Establish a legal and regulatory framework for effective competition in the Arab region;
- Competition policy should protect sectors in need of this protection. Competition and competitiveness go hand in hand, consequently the laws have to be at the service of the national interest: to improve the productivity, growth, etc.
- Legal reforms will follow from political conviction, thus strengthen the relationship between government bodies and competition authorities while maintaining autonomy;
- Convince all countries of the necessity of competition laws and policy. This is achieved by presenting results of sectoral studies;
- For ESCWA to facilitate and continue providing a platform for exchange among Arab Competition Authorities.

*Technical cooperation recommendations:*

- Draft country cases studies that take the survey results into account, but provide a more comprehensive context;
- Organize regional training workshops to disseminate the culture of competition;
- Implement government procurement trainings as a driver to improve the competition environment;
- Implement harm assessments and formulate appropriate policies to stimulate competition;
- Develop a market concentration index in critical sectors of the economy;
- Develop a consumer protection index;

- Conduct sectoral studies on competition at a country and regional level;
- Concerning Lebanon, a letter should be addressed to the minister and organize roundtables to draft a proper competition law;
- ESCWA could monitor the application of laws in other countries and study their effects on different economies. It can collect important case studies and append them to the current indicators used by OECD and ESCWA;
- Organize workshops to share experiences of other countries.

Related to the substantive direction for the Economic Governance and Planning Sections regular publication (i.e., second volume of the Economic Governance Series), the participants agreed that:

- The report should be comprehensive in terms of identifying competition challenges the Arab States are facing, sharing experiences and developing solutions and after finalizing the report, stakeholders could be asked to ratify competition laws;
- Ideas for a next topic: “Relation between innovation and competition: the importance of innovation in our country for a better competition”; “Study on the adverse effects of not having or not abiding by competition policy legislation”.

After two days of substantive and constructive debate on competition policy and regulation in the Arab region, the meeting closed with an expression of gratitude to all the participating experts for their active participation and substantive contribution. All participants expressed their very positive feedback on the meeting towards the ESCWA team and signalled strong willingness to further collaborate.

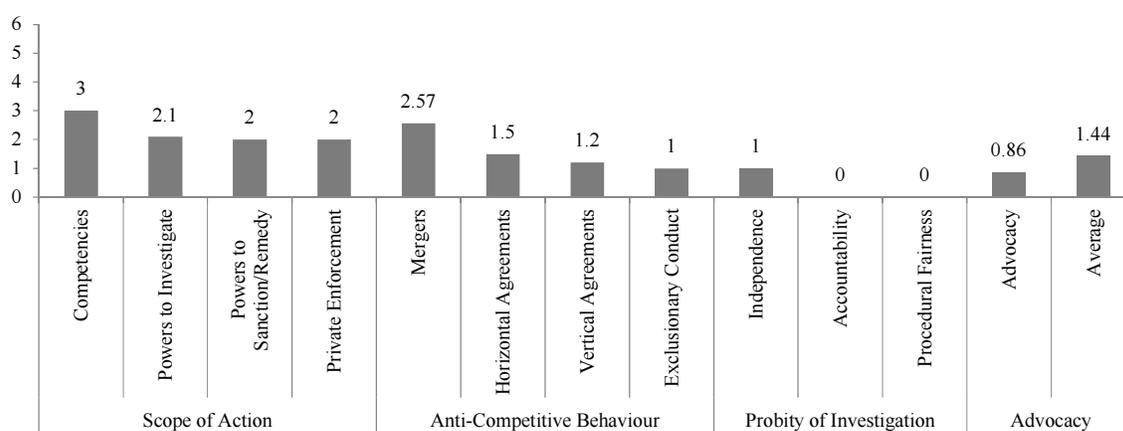
## Annex II

### Country profile: Algeria

#### Strength of competition policy regime

The indicators for Algeria, drawn from the responses to the ESCWA survey on Competition Policy and Regulation in the Arab Region, reveal insubstantial legislative and policy basis in relation to the legal framework for the independence of the Algerian National Competition Council (the Council) and its ability to investigate, sanction and enforce rulings. The scores are within the regional average for the most part, with only ‘Accountability’ and ‘Procedural Fairness’ getting scores of 0, indicating that a strong procedural framework is in place. With an aggregate score of 1.46, Algeria has a relatively strong policy regime, that, nonetheless, suffers from certain legal and procedural issues.

**Figure 1. Summary of indicators of competition policy strength**



**Source:** ESCWA – own calculations.

**Scale:** 0 to 6 from most to least conducive to competition.

The results demonstrate a legal and organizational structure that is nominally independent from governmental structures, whose ability to conduct investigations, studies and judgments on competition cases is relatively unimpaired. Along with both governmental and sectoral organizations, the Council, as the country’s main competition authority, plays an active role in advocating for increased competitiveness in both the public and the private spheres.

Legislatively and procedurally, the Council is promoting sound competition principles that are in line with international standards of competition. However, there is a lack of investigation practice and subsequent enforcement of sanctions or remedies against antitrust infringements. Given the scores on ‘Competences’, ‘Powers to Investigate’, and ‘Powers to Sanction’ on the one hand, and the scores on ‘Mergers’, ‘Horizontal Agreements’ and ‘Vertical Agreements’ on the other, we can infer a policy framework that is suffering from the Council not having adequate jurisdiction and enforcement powers.

#### Overview of competition legislation and regulatory bodies

The Competition Council was founded on 10<sup>th</sup> July 2011 with the enactment of Executive Decree No. 11-241 on *the Organization and Function of the Competition Council*.<sup>1</sup> The Council functions according to Ordinance

<sup>1</sup> Certain amendments to the 2011 Decree have been made in recent years, most recently in 2015 with “Decret executif n° 15-79 fixant l’organisation et le fonctionnement du conseil de la concurrence”, 2015.

No. 03-03 of 19 July 2003 *on Competition*. As part of its mandate, it has three prerogatives: *to sanction* firms found guilty of antitrust infringement, *to control economic concentration* likely to threaten disrupting good competition practice and *to counsel* legislative and executive governmental bodies in the drafting and implementation of competition legislation.<sup>2</sup>

The Council has four directorates: Procedures and Monitoring, Studies; Documentation, Information Systems and Cooperation; Administration and Resources; and Market Analysis, Investigations and Litigation. The budget is allocated by the Ministry of Commerce, contingent upon the needs of the Council,<sup>3</sup> which comprises Sanctioning, Administrative and Investigative bodies. In managing the Council, the President is assisted by the Secretary General and the Investigator (rapporteur) General. The total number of staff is between 150 and 160 people,<sup>4</sup> and the decision-making body is made up of twelve members: six experts in competition, distribution, consumption and intellectual property; four professionals qualified in production, distribution, trade craft, services and the liberal professions; and, finally, two representatives of consumer associations.<sup>5</sup>

### **Relationship between competition authorities and sectoral bodies**

The institutional and jurisdictional expansion of the Council in 2013 and 2014 has placed the renewed Competition authority in legal limbo concerning its relationship with sectoral bodies. Article 39 of Ordinance 03-03 relating to competition states that the Council shall develop relations based on cooperation, coordination and information exchanges with sectoral regulatory bodies.<sup>6</sup> Thus, the jurisdictional and legal relationship between the Council and sectoral bodies is not fixed. In that sense, the relationship between the sectoral bodies and the competition authorities remains uncharted and is decided on an ad-hoc, case-by-case basis, with a spirit of ‘cooperation’ and ‘coordination’, as is the norm amongst most ESCWA member States.

The Council has full jurisdiction to investigate and sanction any economic entity; and although, in most cases, the Council works in cooperation with sectoral bodies, it is not required to do so. Furthermore, there is a notable trend for the Council to adjudicate on most competitiveness issues.<sup>7</sup> This may indicate that Algeria, as are other ESCWA member States, is moving towards a more regulated approach, enabling consistency and predictability.

### **Country profile: Morocco**

#### **Strength of competition policy regime**

The indicators for Morocco, drawn from the responses to the ESCWA survey on Competition Policy and Regulation in the Arab Region, indicate a strong legislative and policy basis that supports business climate with healthy competition within a well-established regulatory framework. The “Competences”, “Private Enforcement”, “Independence”, “Accountability”, “Procedural Fairness” and “Advocacy” indicators have a score of zero, which attests that the legal and procedural frameworks are in line with internationally accepted

<sup>2</sup> See [http://www.conseil-concurrence.dz/?page\\_id=9](http://www.conseil-concurrence.dz/?page_id=9).

<sup>3</sup> The information concerning the annual budget is not publicly available; there are issues of accountability as the Council is not financially independent and is in contradiction to Articles 23 and 33 of Ordinance 03-03 of 19 July 2003 concerning financial and budgetary autonomy. (Algeria, Conseil de la Concurrence, 2014).

<sup>4</sup> Algeria, Conseil de la Concurrence, 2014.

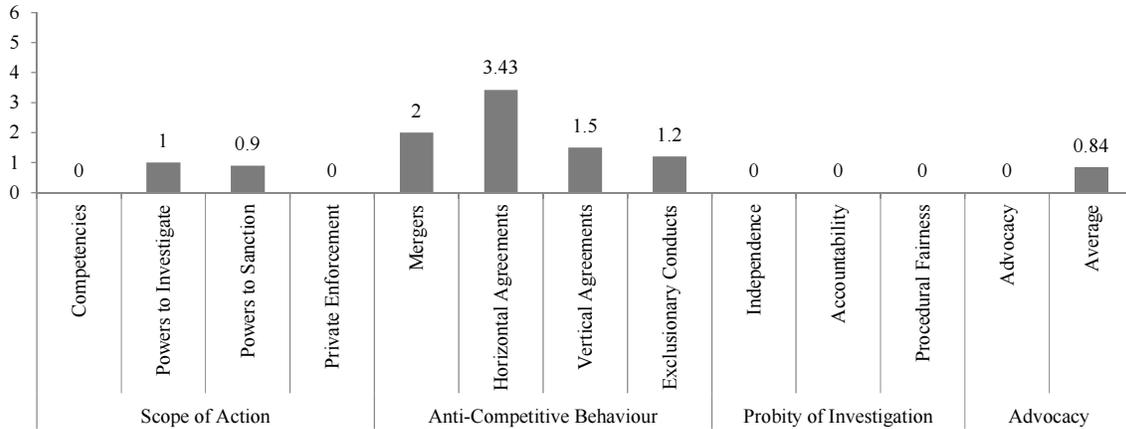
<sup>5</sup> See [http://www.conseil-concurrence.dz/?page\\_id=9](http://www.conseil-concurrence.dz/?page_id=9).

<sup>6</sup> Algeria, 2003.

<sup>7</sup> The Annual report from the Council as well as individual reports on adjudications indicates a growing number of cases per year, whereby antitrust infringement from across the entire economic spectrum are under the jurisdiction of the Council. To see the individual cases as well as trends in Council operations, investigations and sanctions imposed, see Algeria, Conseil de la Concurrence, 2016 and 2014.

good competition practices. With an aggregate score of 0.84, Morocco maintains a competition policy regime conducive to healthy competition.

**Figure 2. Summary of indicators of competition policy strength**



**Source:** ESCWA – own calculations.

**Scale:** 0 to 6 from most to least conducive to competition.

The results demonstrate that there exists an independent legal and organizational structure, whose ability to conduct investigations into, studies of and judgments on competition cases is unimpaired. Furthermore, along with both governmental and sectoral organizations, the *Moroccan Competition Council* (MCC) plays an active role in advocating for increased competitiveness in both the public and the private spheres.

Legislatively and procedurally, the MCC is promoting sound competition principles, thereby contributing positively to economic governance. However, there appears to be a lack of investigation practice and subsequent enforcement of sanctions or remedies against antitrust infringements. Given the scores on the “Mergers”, “Horizontal Agreements”, “Vertical Agreements” and “Exclusionary Conduct” indicators, there appears to be room for improvement, in view of differences in effectiveness between the legal basis and procedural framework and subsequent enforcement of sanctions and remedies.

### Overview of competition legislation and regulatory bodies

The MCC was founded on 5 June 2000 with the enactment of Law No. 06-99 on *Free Pricing and Competition* represents the country’s main competition authority. The Council consists of the President and twelve members, six of whom represent the administration; and three chosen for their expertise in legal, economic, competitive or consumption competences and three hold or have held their activities in the sectors of production and distribution.<sup>8</sup> The legislative basis delegating competency, as well as outlining the organizational structure and jurisdiction to the MCC in the area of competition law and regulation, is Law No. 104-12 on *Free Pricing and Competition* and Law No. 20-13 on the *Competition Council* itself.<sup>9</sup>

In terms of mandate, the mission of the MCC is to supervise and ensure free and fair competition among market entities; intervene as an advisory body to the judiciary, legislative and executive government bodies; and advocate for increased competitiveness. In 2011, following comprehensive reforms with the adoption of a new

<sup>8</sup> See <http://www.conseil-concurrence.ma/pageFr.aspx?id=13>.

<sup>9</sup> See <http://conseil-concurrence.ma/le-conseil/missions/>. Large changes and reforms have been proposed for 2016, with the 2015 reform of Law No. 104-12 and the 2014 reform of Law No. 20-13, giving the Competition Council the necessary legal and procedural powers to investigate, sanction and remedy antitrust infringements.

constitution, the MCC was granted the status of an independent agency. The amendment of Law No. 06-99 recognizes the independence of the MCC, delegates to it investigative and compliance mechanisms, with an expanded jurisdiction and the ability to legally sanction firms in cases of non-compliance.<sup>10</sup> For the year 2013, the MCC benefited from a budget of 14,250,000 MAD (\$1,435,000). This budget has increased on a year-to-year basis from 2009, but the expanded scope of the mandate of the institution requires more funds to hire additional investigators and research staff, for it to be able to provide sectoral and economy studies and conduct investigations in furtherance of efficiently carrying out its mission.<sup>11</sup>

### **Relationship between competition authorities and sectoral bodies**

The expansion of the scope and jurisdiction of the MCC in 2011 has placed the institution in relatively uncharted legal waters in relation to the already established sectoral bodies. As such, the MCC and the relevant sectoral bodies do not have a strictly defined legal or policymaking relationship; instead, when conflicts arise, the outcome is decided on an ad-hoc, case by case and basis. The ESCWA study<sup>12</sup> on competition policy and regulation in the Arab region found that this type of uncharted relationship can be found in most ESCWA member States. However, in line with the law granting independence to the MCC, the yearly MCC report for 2013 indicates multiple binding decisions made on acquisitions, mergers and competition norms found in cases related to unions, telecommunications, tourism, infrastructure, pharmaceuticals and SMEs, demonstrating a growing trend for the MCC to adjudicate on most competition-related breaches of trust.<sup>13</sup> This may be an indication that Morocco is moving towards a rather more regulated approach, enabling consistency and predictability, which can only help create a conducive business climate overall.

### **Country profile: Egypt**

#### **Strength of competition policy regime**

The indicators for Egypt, drawn from the responses to the ESCWA survey on Competition Policy and Regulation in the Arab Region, indicate that norms and practices conducive to competition are developing. With an established legal and policy framework and, as of 2014, much expanded jurisdiction and enforcement powers, the Egyptian Competition Authority (ECA) fares well in terms of scope. However, in terms of enforcement practice, the ECA's ability to enforce sanctions and remedies in merger cases and horizontal agreements is severely hampered. Based on the 'Private Enforcement', 'Vertical Agreements' and 'Exclusionary Conduct' indicators, which had a score of zero, it would appear that the Egyptian judiciary offers a legal framework that provides recourse for persons and firms aggrieved by antitrust infringement, while the ECA actively pursues some forms of antitrust behaviour.

Independence of the ECA is threatened by a precedent of the government interfering in its investigations and by the procedural framework for investigations lacking transparency. Nonetheless, Egypt's competition norms show signs of positive shifts and advocacy indicators highlight a growing presence and activity for the ECA in both the public and the private spheres. The ECA also convenes and contributes to international conferences, workshops and talks through multilateral international organizations supporting healthy competitiveness norms.

With an aggregate score of 1.80, Egypt ranks near the average of the Arab countries. Comprehensive reforms of the competition law in 2014 have led to greater exposure to and implementation of internationally

<sup>10</sup> Idrissi, 2013; and Loi No. 06-99 relative a la Liberté des Prix et de la Concurrence, 2000.

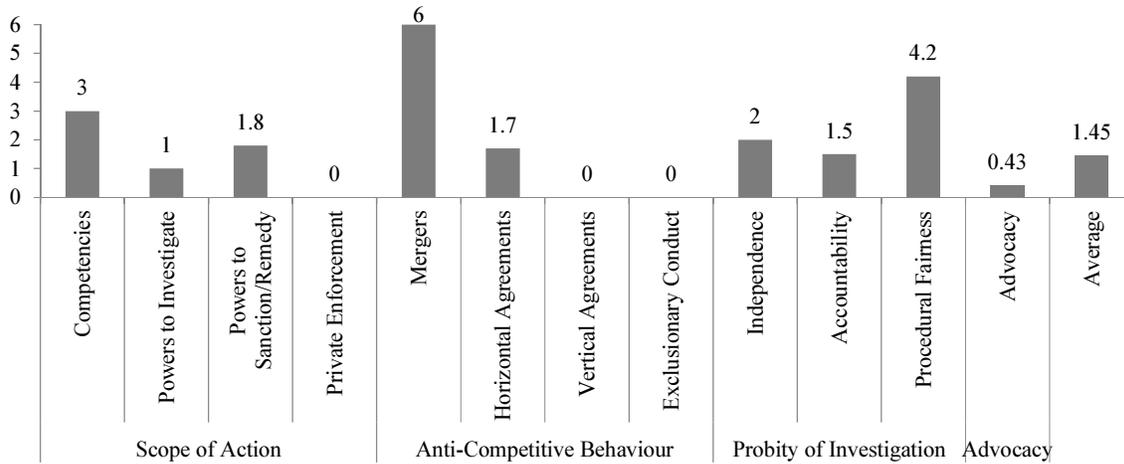
<sup>11</sup> Morocco, Conseil de la Concurrence, 2013, pp. 22-25.

<sup>12</sup> ESCWA, 2015, p. 18.

<sup>13</sup> Morocco, Conseil de la Concurrence, 2013.

recognized good competition practices. However, there are large procedural and enforcements deficits (especially in relation to mergers and cartels), stemming from failure to apply existing legislation.

**Figure 3. Summary of indicators of competition policy strength**



Source: ESCWA – own calculations.

Scale: 0 to 6 from most to least conducive to competition.

### Overview of competition legislation and regulatory bodies

The ECA was established by Law No. 3 of 2005 on *Protection of Competition and Prohibition of Monopolistic Practices*.<sup>14</sup> The ECA, the country’s main competition authority, is an independent organization tasked with enforcement and promotion of competition regulation. The Egyptian Competition Law has been amended several times, most notably in 2008, where increased fines for antitrust infringements were stipulated, and in 2014 with increasing the scope of the jurisdiction and the enforcement capabilities of the ECA.<sup>15</sup> The ECA’s mission is “to set, apply and develop free competition rules, in addition to improving economic environment and promoting consumer welfare through disseminating competition culture and ensuring the provision of high quality, low price, and diverse products”.<sup>16</sup>

The ECA’s decision making body, the Board of Directors, is composed of: a full time Chairperson, a Counsellor from the State Council, two members representing the relevant ministries, three specialists and expert members and six members representing sectoral and consumer associations.<sup>17</sup> The Board governs for a four-year term, renewable once. The ECA maintains an independent budget, made up of: appropriations designated to it from the State general budget, grants and donations, and revenues from the penalty fees provided for in this law.<sup>18</sup> The annual budget for the Fiscal year 2013/2014 was 2,070,210 Dollars.<sup>19</sup> Firms and individuals found to be in violation of antitrust law can be fined and can be criminally prosecuted as per Article 21-23 of Law No. 03 of 2005 on competition in cases of non-compliance with ECA rulings.

<sup>14</sup> See <http://www.eca.org.eg/ECA/StaticContent/View.aspx?ID=1>.

<sup>15</sup> OECD, 2015, pp. 3-4.

<sup>16</sup> See <http://www.eca.org.eg/ECA/StaticContent/View.aspx?ID=4>.

<sup>17</sup> Article 12 of Law No. 3 of 2005, available from <http://www.eca.org.eg/ECA/StaticContent/View.aspx?ID=5>.

<sup>18</sup> Article 14 of Law No. 3 of 2005, available from <http://www.eca.org.eg/ECA/StaticContent/View.aspx?ID=5>.

<sup>19</sup> OECD, 2015, p. 11.

## Relationship between competition authorities and sectoral bodies

In an effort to streamline the legal framework for relationships between the ECA and relevant sectoral bodies, Egypt has opted for a model whereby “sectoral bodies are required to cooperate with the Competition Authority and to deal with competition issues within their sectors”.<sup>20</sup> Whereas most ESCWA member States opt for a ‘looser’ relationship between sectoral bodies and competition authorities, Egypt favours a consultative role for sectoral bodies and their integration within the Competition regime. Thus, their legal and procedural relationship is well established by Law No. 3 of 2005.<sup>21</sup>

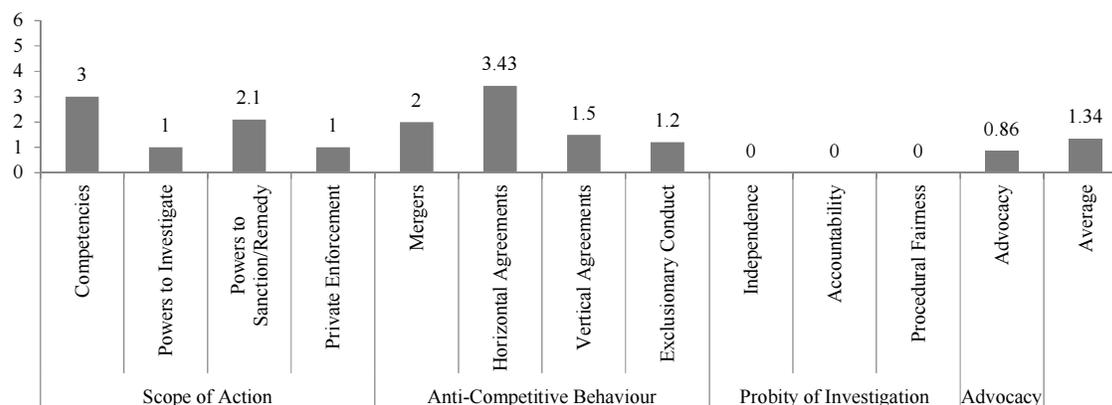
The Board of Directors for the ECA includes six members who are directly nominated by the main sectoral bodies and consumer associations. Hence, beyond the consultative role for sectoral bodies in the decision-making process of the ECA, the decision-making body itself includes representatives from sectoral bodies, indicating an intertwined legal and procedural relationship.

### Country profile: Kuwait

#### Strength of competition policy regime

The indicators for Kuwait, drawn from the responses to the ESCWA survey on Competition Policy and Regulation in the Arab region, indicate a good legislative and policy basis that supports a business climate conducive to increasing competition. ‘Independence’, ‘Accountability’ and ‘Procedural Fairness’ indicators score 0, indicating that the competition authority is independent and is subsisted by a fair and transparent procedural framework.

Figure 4. Summary of indicators of competition policy strength



Source: ESCWA – own calculations.

Scale: 0 to 6 from most to least conducive to competition.

The ‘Powers to Investigate’, ‘Powers to Sanction/Remedy’, ‘Mergers’, ‘Horizontal Agreements’, ‘Vertical Agreements’ and ‘Exclusionary Conduct’ indicators manifest a legal and policy framework that is in line with internationally accepted standards, but is lacking in enforcement and application. Thus, the policy regime suffers from non-enforcement of sanctions and remedies, and non-applicability of legislation.

<sup>20</sup> ESCWA, 2015, p. 27.

<sup>21</sup> Article 11(6) emphasizes the primacy of the ECA in all aspects of competition law and regulation.

## Overview of competition legislation and regulatory bodies

The main competition authority is the Authority for the Protection of Competition (henceforth, the Authority). Established by Law No. 10 of 2007 on Protection of Competition,<sup>22</sup> the Authority is affiliated to the Ministry of Commerce and Industry and its powers include, “endorsement of policies and necessary procedures to protect and support competition; receipt of competition notifications, applications, and complaints; Investigations into agreements, contracts and practices; compiling market data with the co-operation of relevant authorities”.<sup>23</sup> In 2012, the Kuwaiti government enacted by-laws establishing the Competition Authority “intended to safeguard free commerce, bar monopolies, investigate complaints, and refer to prosecution acts determined to undermine competition, supervise mergers and acquisitions, and fix commodity prices”.<sup>24</sup> However, as of February 2016, the Authority has not yet become operational.

The decision-making body of the Authority, the Board, is composed of: a full-time member with specialization and expertise, appointed by decree on the nomination of the Minister of Trade and Industry; two representatives of the Ministry of Trade and Industry and the Ministry of Finance; three market, economic and sectoral/consumer experts; two members representing the Chamber of Commerce and Industry and the Kuwaiti Industries Union; Executive Director, appointed by the Council of Ministers upon nomination by the Minister of Trade ; and one member of the Union of Cooperative Societies.<sup>25</sup> The budget of the Authority is appropriated from that of the Ministry of Trade and Industry.<sup>26</sup>

## Relationship between competition authorities and sectoral bodies

The Authority and the relevant sectoral bodies do not have a strictly defined legal or policymaking relationship. Instead, when conflicts arise, the outcome is decided on an ad-hoc, case-by-case basis. The ESCWA study<sup>27</sup> on competition policy and regulation in the Arab region found that this type of uncharted relationship is found in most ESCWA member States.

### Country profile: Syrian Arab Republic

## Strength of competition policy regime

The indicators for the Syrian Arab Republic, drawn from the responses to the ESCWA survey on Competition Policy and Regulation in the Arab Region, indicate that norms and practices conducive to increasing competition are developing. In terms of the scope, jurisdiction, powers to sanction and enforcement of the Syrian Competition Council (SCC), the indicators evince a sound legal and policy framework, in line with internationally recognized good practice, but also reveal that the SCC is unable to enforce sanctions and remedies. The *Anticompetitive Behaviours* indicators highlight the existence of procedural gaps between the legal framework and the actual practice, with non-enforceability of sanctions and remedies in *Mergers, Cartels, Horizontal Agreements and Vertical Agreements*.

Institutionally, the SCC is an independent and autonomous competition authority, free from governmental obstruction or interference. Through its publication activities, it is also accountable to the public for good competition standards, as well as being accountable to the judiciary. However, issues of transparency and fairness persist, with SCC regulation guidelines and probity assessment practices not being publicly available.

<sup>22</sup> Barakat, A. and Batwala A., 2014.

<sup>23</sup> Al-Ayoub A. and P. Sheet, 2013.

<sup>24</sup> U.S. Department of State, 2015, p. 6.

<sup>25</sup> See Article 11 of Law No. 10 of 2007 on the protection of competition.

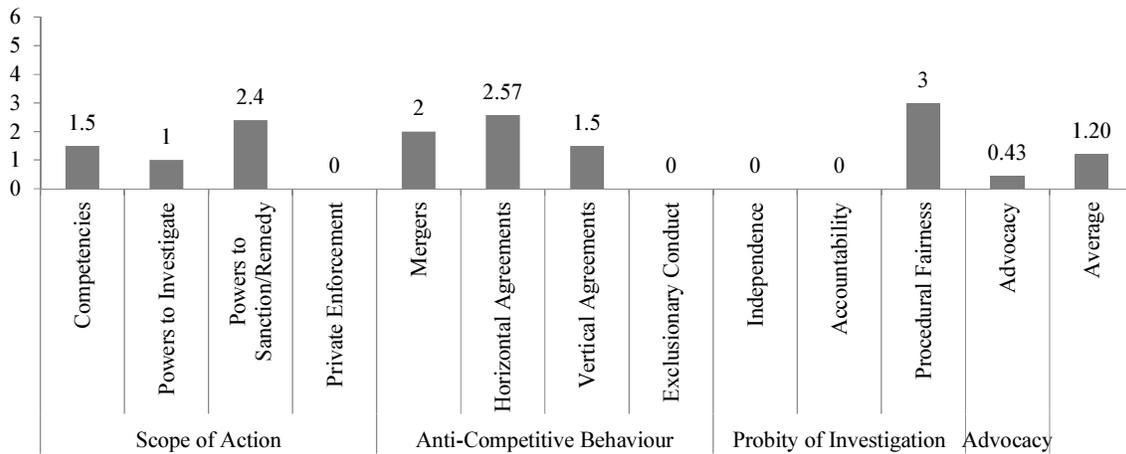
<sup>26</sup> See Article 13 of Law No. 10 of 2007 on the protection of competition.

<sup>27</sup> ESCWA, 2015.

In the long run, this could lead to issues of arbitrary decision-making and loss of confidence in investment. Lastly, the SCC is very active in advocating at the domestic and international levels for increased competitiveness in the Syrian Arab Republic and the region. Advocacy indicators show a growing presence of the SCC in both the public and the private economic spheres.

With an aggregate score of 1.20, the Syrian Arab Republic ranks relatively well among Arab countries. With a good legal and policy framework in place, established independence of the SCC, and growing norms of accountability and competitiveness, the Syrian Arab Republic maintains a relatively solid legal baseline. However, noncompliance and non-enforceability of established legal and policy criteria, coupled with a lack of transparency within the SCC, reinforce continuing procedural deficits.

**Figure 5. Summary of indicators of competition policy strength**



**Source:** ESCWA – own calculations.

**Scale:** 0 to 6 from most to least conducive to competition.

### Overview of competition legislation and regulatory bodies

The SCC was founded in 2008 under Law /7/ of 2008 on *Competition Protection and Prevention Monopoly*, which was part of a wider comprehensive legal and economic reform package established by the Syrian government starting in 2005, aimed at moving towards a market economy.<sup>28</sup> The SCC is the Syrian Arab Republic’s main competition authority. Its decision making body, the *Council*, is composed of eleven members: three judges, two members from the Central Authority of Financial Control, three economic experts, and three elected members from relevant sectoral and consumer authorities.<sup>29</sup> The organization of the SCC consists of various investigative, administrative and probity bodies. The mission of the SCC is to act as an advisory body to the legislative and executive branches in drafting and implementation of competition laws, investigate antitrust infringements and conduct market/sectoral studies. It maintains an independent budget included in the State budget and its financial resources consist of State budgetary appropriations, and additional resources coming from donations, grants, service fees and fund returns.<sup>30</sup>

<sup>28</sup> For more information on the reforms, their effectiveness and implementation see: Brück, Binzel, and Handrich, 2007, pp. 1-2; World Bank, 2005, 2011.

<sup>29</sup> For more information on the makeup of the Competition Council see Article 11B of Law /7/ of 2008 Act of Competition Protection and Prevention of Monopoly.

<sup>30</sup> See Article 22, The Budget, of Law /7/ of 2008 Act of Competition Protection and Prevention of Monopoly.

## Relationship between competition authorities and sectoral bodies

Article 13C in Chapter 5 of Law No. 7 of 2008, states that “Governmental agencies and sectoral organizational bodies in which control of any economic concentration process is vested pursuant to the legislations related thereto must depend on the written opinion of the Council within the limits of its speciality provided for herein”. Hence, the SCC must cooperate with sectoral authorities and bodies in investigative and market probity issues, while sectoral bodies must take into account the opinion of the Council on competition related issues.

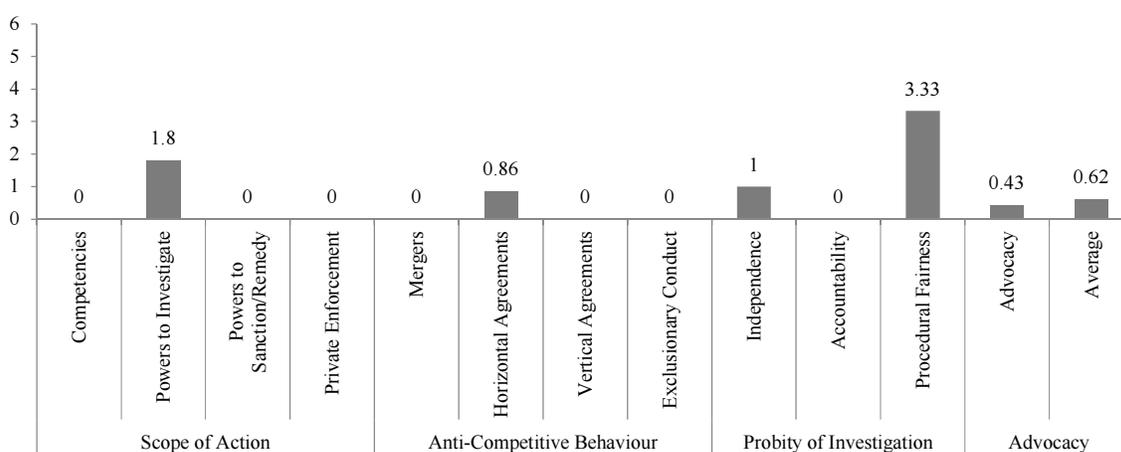
The SCC and the relevant sectoral bodies do not have a strictly defined legal and policymaking relationship. Instead, when conflicts arise, the outcome is decided upon on an ad-hoc, case-by-case basis. The ESCWA study on competition policy and regulation in the Arab region found that this type of uncharted relationship is found in most ESCWA member States.<sup>31</sup>

### Country profile: Tunisia

#### Strength of competition policy regime

The indicators for Tunisia, drawn from the responses to the ESCWA survey on Competition Policy and Regulation in the Arab Region, indicate a strong legislative and policy basis that supports a business climate with healthy competition within a well-established regulatory framework. The ‘Competences’, ‘Powers to Investigate’, ‘Private enforcement’, ‘Mergers’, ‘Vertical Agreements’, ‘Exclusionary Conducts’, and ‘Accountability’ indicators have a score of zero, illustrating that the legal framework is conducive to increasing competition. With an aggregate score of 0.62, the Tunisian legal and policy competition regime supports healthy competition.

Figure 6. Summary of indicators of competition policy strength



Source: ESCWA – own calculations.

Scale: 0 to 6 from most to least conducive to competition.

The results of the survey indicate a legal and organizational structure roughly in line with international standards on competition, revolving around two competition authorities with similar prerogatives; namely, the Direction générale de la concurrence et des enquêtes économiques (DGCEE) and the Conseil de la Concurrence Tunisienne (TCC).<sup>32</sup> However, the ‘Powers to Sanction/Remedy’ antitrust violations,

<sup>31</sup> ESCWA, 2015, p. 18.

<sup>32</sup> The DGCEE is a competition authority within the government body under the jurisdiction of the Ministry of Commerce, whereas the TCC is an independent competition authority. See [http://www.commerce.gov.tn/Fr/autorites-de-la-concurrence\\_11\\_110](http://www.commerce.gov.tn/Fr/autorites-de-la-concurrence_11_110).

‘Independence’ and ‘Procedural Fairness’ indicators evince a legislative and policy lack in institutional independence from government interference, as well as reduced ability to respond to antitrust infringement. Furthermore, the procedural framework is wrought with issues and requires further development. The two competition bodies show a very healthy track record of enforcement in antitrust decisions, with some of the lowest scores among ESCWA member States on indicators of scope and probity of investigation and enforcement of antitrust sanctions and remedies.

### **Overview of competition legislation and regulatory bodies**

The TCC was established by Law No. 91-64 of July 29th, 1991 on Competition and Pricing.<sup>33</sup> Its main objective is to advise the legislature on the drafting of competition laws, while providing binding decisions and judgments on suspected antitrust behaviour and enforcing sanctions and remedies.<sup>34</sup> Furthermore, in the last decade, the TCC has taken the lead in investigating and prosecuting antitrust infringements, on the basis of multiple amendments to Law No. 91-64. Article 9 of this Law decrees that the executive, its ministries, the legislature, and sectoral bodies may demand probes into potential antitrust infringement. The President of the TCC is appointed by the executive for a five-year term, renewable once. As per article 10 of Law No. 91-64, amended in 2003, the decision-making body is comprised of two vice presidents representing the judiciary and the legislature, four magistrates, four sectoral experts, and two economic experts. Law No. 2015-36 of 15 September 2015 on reorganization of competition and prices is the latest amendment to the original competition law of 1991. The new amendment obligates the legislature and executive government bodies to consult the TCC on new competition laws. Furthermore, it enhances the independence and transparency of the TCC, while expanding its sanctioning powers.

The DGCEE is a governmental competition authority, under the Ministry of Commerce, with responsibility for the development and implementation of competition policy and price regulation. It is mandated to draft (in cooperation with the TCC), advise on and implement legislation and policies on competition, as well as provide oversight of and assistance to the TCC.<sup>35</sup> The DGCEE consists of four distinct divisions: the ‘Authority on Prices and Competition’, the ‘Authority on Economic Investigation’, the ‘National Observatory on Market Supply and Pricing’ and the ‘Authority on Litigation’.<sup>36</sup>

The two authorities work together to promote competition norms, in government structures, private enterprise and among consumers.

The TCC is well funded and, together with the DGCEE, has had an increasingly positive record of accomplishment of enforcement of sanctions and remedies and investigations of and probes into antitrust infringement, as well as in advocacy for better competition legislation and policy.<sup>37</sup>

### **Relationship between competition authorities and sectoral bodies**

The TCC and DGCEE cooperate with sectoral bodies in cases of antitrust infringement. There is no established legal relationship between the sectoral organizations and the competition authorities, delineating respective jurisdictions. Instead, when conflicts arise, the outcome is decided upon on an ad-hoc, case by case and basis.

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<sup>33</sup> The Law has been modified extensively to increase the scope and jurisdiction of the TCC as well as to provide for enforcement mechanisms. Modifications and revisions: \*la loi 93-83 du 26 juillet 93, \*95-42 du 24 avril 95, \*99-41 du 10 mai 99, \*2003-47 du 11 novembre 2003. See: Loi no. 91-64 relative à la concurrence et aux prix, 1991.

<sup>34</sup> Sanctions and remedies enforced by the TCC can be done independently or in cooperation with the DGCEE. (UNCTAD, 2006, p. 15).

<sup>35</sup> Although the DGCEE and TCC have overlapping jurisdictions and powers in investigating and enforcement of sanctions, the TCC deals mostly with cases of antitrust related to mergers, horizontal and vertical agreements and cartels which may upset market efficiencies and barriers to entry, while the DGCEE is the main authority for market and price antitrust behavior. (UNCTAD, 2006, pp. 12-13).

<sup>36</sup> (UNCTAD,2006).

<sup>37</sup> See studies on commercial law in EBRD, 2013; and on competition policy in OECD CleanGovBiz, 2013 pp. 29-38 and UNCTAD, 2006.

The ESCWA study on competition policy and regulation in the Arab region found that this type of uncharted relationship is found in most ESCWA member States.<sup>38</sup>

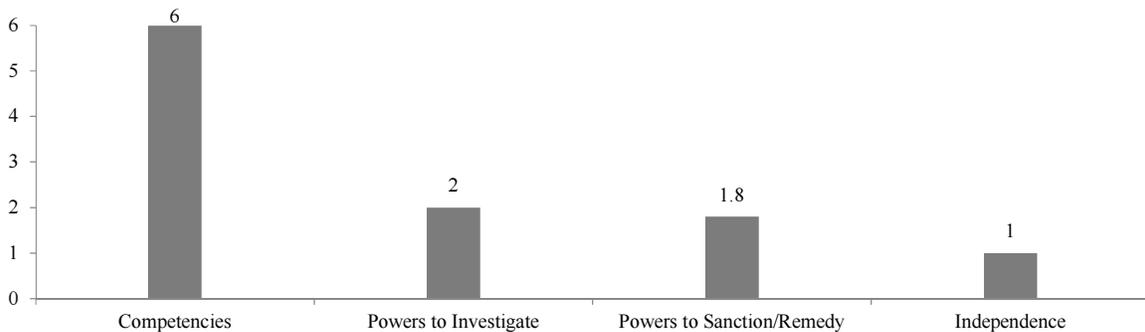
**Country profile: Yemen**

**Strength of competition policy regime**

Only the sections of the survey on the ‘Competences’, ‘Powers to Investigate’, ‘Powers to Sanction/Remedy’ and ‘Independence’ indicators have been completed. Those on the ‘Private Enforcement’, ‘Mergers’, ‘Horizontal Agreements’, ‘Vertical Agreements’, ‘Exclusionary Conducts’, ‘Independence’, ‘Accountability’, ‘Procedural Fairness’ and ‘Advocacy’ indicators have not. Hence, it is not possible to produce a complete picture of the Yemeni Competition policy regime.

However, the responses received indicate a current competition policy regime that has extensive deficiencies in ability to implement, enforce and advocate increasing competition. Being part of the Ministry of Trade & Industry, the Authority for the Protection of Competition and Prevention of monopoly (the Authority) is not independent, but liable to imposed direction and interference from government bodies. According to the ‘Independence’ indicator, the Authority maintains a certain level of autonomy, illustrating that norms of good competition practice exist at government level. However, the indicators on scope of action reveal a severely limited ability to investigate and enforce sanctions. The jurisdiction of the Authority does not cover foreign firms operating in Yemen, nor State-Owned Enterprises (SOEs), while certain policy elements related to investigation and sanction practices limit its operational capability.

**Figure 7. Summary of indicators of competition policy strength**



**Source:** ESCWA – own calculations.

**Scale:** 0 to 6 from most to least conducive to competition.

The Organization does engage in the production of market/sectoral studies, and participates in domestic and international conferences and workshops related to competition legislation, policy and practice, which illustrates a growing emphasis on developing good competition norms in the country.

**Overview of competition legislation and regulatory bodies**

Republican Decree No. 19 of 1999 concerning Competition Promotion, and Prevention of Monopoly and Commercial Deception is the main law governing competition. Article 10 established the Competition Protection and Monopoly Prevention Organization “aimed at exposing monopoly cases, vertical integration, and horizontal concentration, or concealing any commodity or material necessary for production or manufacturing another good in the local market, at the time of its sale, offer, and pricing, in any manner that

<sup>38</sup> ESCWA, 2015.

would constrain free competition. Furthermore, the Organization will be in charge of formulating the necessary policies and procedures for the purposes of protecting and supporting competition”.<sup>39</sup> The Organization has investigative, research and advisory roles within the Ministry of Industry and Trade.

The Organization is the main competition authority, investigating cases of antitrust behaviour, providing market/sectoral studies, and advising governmental executive and legislative bodies on formulation and implementation of competition laws. It is chaired by the Minister of Industry and Trade, who retains the power to nominate its members. Ultimately, the Minister can act upon the Organization’s recommendations and legally pursue firms and individuals alleged to have committed antitrust infringements, but is not bound by these recommendations.<sup>40</sup> The organizational structure and number of staff of the Organization are not specified, as are its budget and operational costs.

### **Relationship between competition authorities and sectoral bodies**

The relationship between the Organization and sectoral bodies is not specified in Law No. 19 of 1999 on Competition. Being part of the Ministry of Trade and Industry and chaired by the Minister, the Organizations not an independent competition authority. The Ministry interacts with the private sectoral bodies in accordance with Republican decree No. 28 of 2003<sup>41</sup> on chambers of commerce and industry and their general union. There is, however, no specific legal relationship governing the interaction between the competition authority and private sectoral bodies. Thus, when conflicts arise, the outcome is decided upon on an ad-hoc, case-b- case basis. The ESCWA study<sup>42</sup> on competition policy and regulation in the Arab region found that this type of uncharted relationship is found in most ESCWA member States.

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<sup>39</sup> See [http://www.moit.gov.ye/moit/sites/default/files/Law%20on%20promotion%20of%20competition\\_0.pdf](http://www.moit.gov.ye/moit/sites/default/files/Law%20on%20promotion%20of%20competition_0.pdf).

<sup>40</sup> Dabbah, 2007, pp. 216-217.

<sup>41</sup> Law No. 14 of 1963 establishing the Federation of Chambers of Commerce and Industry of Yemen was amended multiple times with decree No. 27 of 1982 and decree No. 18 of 1999. For more information see ASSECAA, 2011.

<sup>42</sup> ESCWA, 2015.

## Annex III

### Data

#### Scope of action indicators

|  | Answers and scoring   | Morocco | Yemen | Tunisia | Algeria | Egypt | Syrian Arab Republic | Kuwait |
|--|---|---------|-------|---------|---------|-------|----------------------|--------|
| <b>SECTION 1. COMPETENCES</b>  |   |         |       |         |         |       |                      |        |
| Does the competition law apply also to firms located outside your jurisdiction whose behaviour directly affects competition and/or consumers in domestic markets? (Q1.1)   | yes = 0<br>no = 6   | 0       | 6     | 0       | 6       | 0     | 0                    | 0      |
| In your jurisdiction, are State-controlled firms exempt from the application of competition law when conducting commercial activities in competition with private firms? (Q1.2)  | yes = 6<br>yes (but only in some sectors or with respect to some antitrust infringements) = 3<br>no = 0 | 0       | 6     | 0       | 0       | 6     | 3                    | 6      |
| <b>SECTION 3. POWERS TO INVESTIGATE</b>  |   |         |       |         |         |       |                      |        |
| Can your competition agency compel (or ask a court to compel) firms investigated for a possible antitrust infringement to provide information? (Q3.1)  | yes = 0<br>no = 06  | 0       | 0     | 0       | 0       | 0     | 0                    | 0      |
| Can your competition agency compel (or ask a court to compel) third parties to provide information to help an investigation on an antitrust infringement? (Q3.2)   | yes = 0<br>no = 6   | 0       | 0     | 0       | 0       | 0     | 0                    | 0      |
| Can your competition agency perform unannounced inspections/searches in the premises of firms investigated for a possible antitrust infringement aimed at gathering evidence (with or without a warrant/court authorization)? (Q3.3) | yes = 0<br>no = 6   | 0       | 6     | 0       | 0       | 0     | 0                    | 0      |

|  | Answers and scoring  | Syrian Arab Republic |       |         |         |       |                      |        |
|--|--|----------------------|-------|---------|---------|-------|----------------------|--------|
|  |  | Morocco              | Yemen | Tunisia | Algeria | Egypt | Syrian Arab Republic | Kuwait |
| If yes, has your competition agency performed unannounced inspections in the premises of firms investigated for a possible antitrust infringement <u>at least once in the last five years?</u> (Q3.4)          | yes = 0<br>no = 6<br>not applicable = 6  | 6                    | 6     | 0       | 6       | 0     | 6                    | 6      |
| Can your competition agency compel (or ask a court to compel) merging firms to provide information to help it assess the merger? (Q3.5)  | yes = 0<br>no = 6  | 0                    | 0     | 0       | 0       | 0     | 0                    | 0      |
| Can your competition agency compel (or ask a court to compel) third parties to provide information to help it assess the merger? (Q3.6)  | yes = 0<br>no = 6  | 0                    | 0     | 0       | 6       | 6     | 0                    | 0      |
| <b>SECTION 4. POWERS TO SANCTION/REMEDY</b>  |  |                      |       |         |         |       |                      |        |
| Can your competition agency impose, or ask a court to impose, remedies or a cease and desist order on firms that have committed an antitrust infringement? (Q4.1)  | yes (for all antitrust infringements) = 0<br>yes (but only for some antitrust infringements) = 3<br>no = 6 | 0                    | 3     | 3       | 3       | 0     | 3                    | 3      |
| If yes, can your competition agency impose, or ask a court to impose sanctions on firms that do not comply with remedies imposed on them with respect to an antitrust infringement they have committed? (Q4.2) | yes = 0<br>no = 0<br>not applicable = 6  | 0                    | 0     | 6       | 0       | 0     | 0                    | 0      |
| Can your competition agency impose, or ask a court to impose, sanctions on firms that have committed an antitrust infringement? (Q4.3)   | yes (for all antitrust infringements) = 0<br>yes (but only for some antitrust infringements) = 3<br>no = 6 | 3                    | 0     | 3       | 3       | 0     | 3                    | 3      |

|   | Answers and scoring  | Country |       |         |         |       |                      |        |
|---|--|---------|-------|---------|---------|-------|----------------------|--------|
|   |  | Morocco | Yemen | Tunisia | Algeria | Egypt | Syrian Arab Republic | Kuwait |
| Can your competition agency, or a court, accept or impose remedies on firms in order to clear a merger? (Q4.4)  | yes = 0<br>no = 6  | 0       | 0     | 0       | 0       | 6     | 0                    | 0      |
| Can your competition agency impose, or ask a court to impose, sanctions on a firm that hinders an investigation on an alleged antitrust infringement? (Q4.5)  | yes = 0<br>no = 6  | 0       | 0     | 0       | 0       | 0     | 0                    | 0      |
| If yes, have sanctions been imposed on a firm and/or individuals for hindering an investigation on an antitrust infringement <u>at least once in the last ten years?</u> (Q4.6)   | yes = 0<br>no = 6<br>not applicable = 6  | 6       | 6     | 0       | 6       | 0     | 6                    | 6      |
| Can your competition agency impose, or ask a court to impose, sanctions on firms and/or individuals that do not comply with a decision concerning a merger? (Q4.7)  | yes = 0<br>no = 6  | 0       | 0     | 0       | 0       | 6     | 0                    | 0      |
| Can your competition agency impose, or ask a court to impose, interim measures while performing an investigation of an alleged antitrust infringement because there is a concern that this may lead to irreversible damages? (Q4.8) | yes (for all antitrust infringements) = 0<br>yes (but only for some antitrust infringements) = 3<br>no = 6 | 0       | 6     | 3       | 3       | 0     | 6                    | 6      |
| Can your competition agency, or a court, settle voluntarily with the parties investigated for an alleged antitrust infringement and thus close the investigation? (Q4.9)  | yes (for all antitrust infringements) = 0<br>yes (but only for some antitrust infringements) = 3<br>no = 6 | 0       | 3     | 3       | 6       | 0     | 6                    | 3      |
| Can your competition agency, or a court, clear a merger that raises anticompetitive concerns  | yes = 0<br>no = 6  | 0       | 0     | 0       | 0       | 6     | 0                    | 0      |

|   | Answers and scoring  | Morocco | Yemen | Tunisia | Algeria | Egypt | Syrian Arab Republic | Kuwait |
|---|--|---------|-------|---------|---------|-------|----------------------|--------|
| by negotiating/accepting remedies that address these concerns at an early stage and thus avoid to perform a more in-depth investigation? (Q4.10)                                |  |         |       |         |         |       |                      |        |
| <b>SECTION 12. PRIVATE ENFORCEMENT</b>  |  |         |       |         |         |       |                      |        |
| Can individuals bring a legal action to seek damages from firms that have committed an antitrust infringement? (Q12.1)  | yes = 0<br>yes (but only for some antitrust infringements) = 3<br>no = 6 | 0       |       | 0       | 0       | 0     | 0                    | 3      |
| Can firms bring a legal action to seek damages from firms that have committed an antitrust infringement? (Q12.2)  | yes = 0<br>yes (but only for some antitrust infringements) = 3<br>no = 6 | 0       |       | 0       | 0       | 0     | 0                    | 0      |
| Can a group of consumers (either collectively or through a consumer association) bring a legal action to seek damages from firms that have committed an antitrust infringement? | yes = 0<br>yes (but only for some antitrust infringements) = 3<br>no = 6 | 0       |       | 0       | 6       | 0     | 0                    | 0      |

*Anticompetitive behaviour indicators*

|  | Answers and scoring | Morocco | Tunisia | Algeria | Egypt | Syrian Arab Republic | Kuwait |
|--|---------------------|---------|---------|---------|-------|----------------------|--------|
| <b>SECTION 5. MERGERS</b>  |                     |         |         |         |       |                      |        |
| Does the decision-maker conduct an economic analysis of the competitive effects of mergers when investigating them? (Q5.1) | yes = 0<br>no = 6   | 0       | 0       | 0       | 6     | 0                    | 0      |
| When assessing a merger can the decision-maker consider whether the merger is likely to generate efficiencies? (Q5.2)      | yes = 0<br>no = 6   | 0       | 0       | 0       | 6     | 0                    | 0      |
| Has the decision-maker blocked or cleared with remedies at least one merger in the last five years? (Q5.3)                 | yes = 0<br>no = 6   | 6       | 0       | 6       | 6     | 6                    | 6      |
| <b>SECTION 6. HORIZONTAL AGREEMENTS</b>  |                     |         |         |         |       |                      |        |
| Are anticompetitive horizontal agreements (including cartels) prohibited in your jurisdiction? (Q6.1)                      | yes = 0<br>no = 6   | 0       | 0       | 0       | 0     | 0                    | 0      |

|  | Answers and scoring  | Morocco | Tunisia | Algeria | Egypt | Syrian Arab Republic | Kuwait |
|--|--|---------|---------|---------|-------|----------------------|--------|
| Does the decision-maker conduct an economic analysis of the competitive effects of horizontal agreements when investigating them? (Q6.2)                         | yes = 0<br>yes (but not in the case of cartels) = 0<br>no = 6 not applicable = 6                   | 0       | 0       | 0       | 0     | 0                    | 0      |
| When investigating an allegedly anticompetitive horizontal agreement can the decision-maker consider any efficiency this may generate? (Q6.3)                    | yes = 0<br>yes (but not in the case of cartels) = 0<br>no = 6 not applicable = 6                   | 6       | 0       | 0       | 0     | 0                    | 0      |
| Have sanctions and/or remedies been imposed on at least one cartel in your jurisdiction in the last five years? (Q6.4)   | yes = 0<br>no = 6 not applicable = 6   | 6       | 0       | 6       | 0     | 0                    | 6      |
| Have sanctions and/or remedies been imposed on at least one anticompetitive agreement that is not a cartel in your jurisdiction in the last five years (Q6.5)?   | yes = 0<br>no = 6 not applicable = 6   | 6       | 0       | 6       | 6     | 6                    | 6      |
| Does your jurisdiction have a leniency/immunity program for cartel participants (firms and/or individuals)? (Q6.6)   | yes = 0<br>no = 6 not applicable = 6   | 0       | 0       | 0       | 0     | 6                    | 6      |
| If yes, has the leniency program generated <u>at least one</u> application in the last five years? (Q6.7)  | yes = 0<br>no = 6 not applicable = 6   | 6       | 6       | 6       | 6     | 6                    | 6      |
| <b>SECTION 7. VERTICAL AGREEMENTS</b>  |  |         |         |         |       |                      |        |
| Are anticompetitive vertical agreements prohibited in your jurisdiction? (Q7.1)  | yes = 0<br>no = 6  | 0       | 0       | 0       | 0     | 0                    | 0      |
| Does the decision-maker conduct an economic analysis of the competitive effects of vertical agreements when investigating them? (Q7.2)                           | yes = 0 yes, but not in the case of hard core vertical agreements = 0<br>no = 6 not applicable = 6 | 0       | 0       | 0       | 0     | 0                    | 0      |
| When investigating an allegedly anticompetitive vertical agreement can the decision-maker consider any efficiency this may generate? (Q7.3)                      | yes = 0 yes, but not in the case of hard core vertical agreements = 0<br>no = 6 not applicable = 6 | 0       | 0       | 0       | 0     | 0                    | 0      |
| Have sanctions and/or remedies been imposed <u>on at least one</u> anticompetitive vertical agreement <u>in your jurisdiction in the last five years?</u> (Q7.4) | yes = 0<br>no = 6 not applicable = 6   | 6       | 0       | 6       | 0     | 6                    | 6      |

|   |                                      | Answers and scoring |       |         |         |       | Syrian Arab Republic |
|---|--------------------------------------|---------------------|-------|---------|---------|-------|----------------------|
|   |                                      | Morocco             | Yemen | Tunisia | Algeria | Egypt |                      |
| <b>SECTION 8. EXCLUSIONARY CONDUCTS</b>   |                                      |                     |       |         |         |       |                      |
| Are exclusionary conducts by dominant firms and/or by firms with substantial market power prohibited in your jurisdiction?  | yes = 0<br>no = 6                    | 0                   | 0     | 0       | 0       | 0     | 0                    |
| Does the decision-maker take non-market-share factors (such as conditions of entry, ability of smaller firms to expand, and ability of customers to switch to smaller rivals) into account when determining dominance? (Q8.2) | yes = 0<br>no = 6 not applicable = 6 | 0                   | 0     | 0       | 0       | 0     | 0                    |
| Does the decision-maker conduct an economic analysis of the competitive effects of exclusionary conducts when investigating them? (Q8.3)  | yes = 0<br>no = 6 not applicable = 6 | 0                   | 0     | 0       | 0       | 0     | 0                    |
| When investigating an allegedly exclusionary conduct can the decision-maker consider any efficiency this may generate? (Q8.4)   | yes = 0<br>no = 6 not applicable = 6 | 0                   | 0     | 0       | 0       | 0     | 0                    |
| Has the decision-maker in your jurisdiction imposed sanctions and/or remedies <u>on at least one</u> firm for exclusionary conduct over the past five years? (Q8.5)   | yes = 0<br>no = 6 not applicable = 6 | 6                   | 0     | 6       | 0       | 0     | 6                    |

*Probity of investigation indicators*

|   |   | Answers and scoring |       |         |         |       | Syrian Arab Republic | Kuwait |
|---|---|---------------------|-------|---------|---------|-------|----------------------|--------|
|   |   | Morocco             | Yemen | Tunisia | Algeria | Egypt |                      |        |
| <b>SECTION 2. INDEPENDENCE</b>  |   |                     |       |         |         |       |                      |        |
| Have the government/ministers given binding directions to the competition agency on whether it should open an investigation on an alleged antitrust infringement at least once in the last five years? (Q2.2)                   | yes = 6<br>no, because the agency has to examine all the complaints it receives = 0<br>no = 0 | 0                   | 0     | 0       | 0       | 0     | 0                    | 0      |
| Have the government/ministers given binding directions to the decision-maker in your jurisdiction on whether it should close an investigation on an alleged antitrust infringement at least once in the last five years? (Q2.4) | yes = 6<br>no = 0   | 0                   | 0     | 0       | 0       | 6     | 0                    | 0      |

|   | Answers and scoring |         |       |         |         |       | Syrian Arab Republic | Kuwait |
|---|---------------------|---------|-------|---------|---------|-------|----------------------|--------|
|   |                     | Morocco | Yemen | Tunisia | Algeria | Egypt |                      |        |
| Have the government/ministers given binding directions to the competition agency on whether it should impose/not impose (or ask a court to impose/not impose) specific remedies when closing an investigation on an alleged antitrust infringement at least once in the last five years? (Q2.6) | yes = 6<br>no =0    | 0       | 0     | 0       | 0       | 0     | 0                    | 0      |
| Have the government/ministers given binding directions to the competition agency (or other public bodies) on whether it should not undertake a market/sectoral study at least once in the last five years? (Q2.8)   | yes = 6<br>no =0    | 0       | 6     | 6       | 6       | 6     | 0                    | 0      |

|   | Answers and scoring   |         |       |         |         |       | Syrian Arab Republic | Kuwait |
|---|---|---------|-------|---------|---------|-------|----------------------|--------|
|   |   | Morocco | Yemen | Tunisia | Algeria | Egypt |                      |        |
| Have the government/ministers overturned a decision concerning the clearance of a merger <u>at least once in the last five years?</u> (Q2.10)       | yes, to fully overturn = 6<br>yes, but only as regards to remedies imposed =3<br>no = 0 | 0       | 0     | 0       | 0       | 0     | 0                    | 0      |
| Have has the government/ministers overturned a decision concerning the prohibition of a merger <u>at least once in the last five years?</u> (Q2.12) | yes = 6<br>no =0  | 0       | 0     | 0       | 0       | 0     | 0                    | 0      |
| <b>SECTION 10. ACCOUNTABILITY</b>   |   |         |       |         |         |       |                      |        |
| Does your competition agency publish regularly a report on its activities? (Q10.1)  | yes = 0<br>no = 6   | 0       |       | 0       | 0       | 0     | 0                    | 0      |
| Are decisions that ascertain the existence of an antitrust infringement published by the relevant decision-maker? (Q10.2)                           | yes = 0<br>yes (but not all) = 3<br>no = 6  | 0       |       | 0       | 0       | 0     | 0                    | 0      |

|  | Answers and scoring                        | Syrian Arab Republic |       |         |         |       |                      |        |
|--|--|----------------------|-------|---------|---------|-------|----------------------|--------|
|  |  | Morocco              | Yemen | Tunisia | Algeria | Egypt | Syrian Arab Republic | Kuwait |
| Are decisions that block a merger or clear a merger with remedies published by the relevant decision-maker? (Q10.3)  | yes = 0<br>yes (but not all) = 3<br>no = 6 | 0                    |       | 0       | 0       | 6     | 0                    | 0      |
| Can decisions on antitrust infringements and mergers (whether taken by a competition agency or a court) be subject to judicial review with respect to their substance? (Q10.4)   | yes = 0<br>no = 6                          | 0                    |       | 0       | 0       | 0     | 0                    | 0      |
| <b>SECTION 11. PROCEDURAL FAIRNESS</b>   |  |                      |       |         |         |       |                      |        |
| Does your competition agency provide the party/parties under investigation for an antitrust infringement with opportunities to consult with your competition agency with regard to significant legal, factual or procedural issues during the course of the investigation? (Q11.1) | yes = 0<br>no = 6                          | 0                    |       | 0       | 0       | 0     | 0                    | 0      |
| Do parties have the right to be heard and present evidence before the imposition of any sanctions or remedies for having committed an antitrust infringement? (Q11.2)  | yes = 0<br>no = 6                          | 0                    |       | 0       | 0       | 0     | 0                    | 0      |
| Does your competition agency provide the parties under investigation for a merger with opportunities to consult with your competition agency with regard to significant legal, factual or procedural issues during the course of the investigation? (Q11.3)                        | yes = 0<br>no = 6                          | 0                    |       | 0       | 0       | 6     | 0                    | 0      |
| Do parties have the right to be heard and present evidence before a decision on a merger is reached? (Q11.4)   | yes = 0<br>no = 6                          | 0                    |       | 0       | 0       | 6     | 0                    | 0      |

|   | Answers and scoring | Syrian Arab Republic |       |              |              |       |                      |        |
|---|---------------------|----------------------|-------|--------------|--------------|-------|----------------------|--------|
|   |                     | Morocco              | Yemen | Tunisia      | Algeria      | Egypt | Syrian Arab Republic | Kuwait |
| Does your competition agency publish procedural guidelines or public documents explaining its investigative procedures? (Q11.5)   | yes = 0<br>no = 6   | 0                    |       | 6            | 0            | 0     | 6                    | 0      |
| Does your competition agency publish guidelines that explain how abuses of dominance are assessed? (Q11.6)  | yes = 0<br>no = 6   | 0                    |       | 6            | 0            | 6     | 6                    | 0      |
| Does your competition agency publish guidelines that explain how horizontal agreements are assessed? (Q11.7)  | yes = 0<br>no = 6   | 0                    |       | 6            | 0            | 6     | 6                    | 0      |
| Does your competition agency publish guidelines that explain how vertical agreements are assessed? (Q11.8)  | yes = 0<br>no = 6   | 0                    |       | 6            | 0            | 6     | 6                    | 0      |
| Does your competition agency publish guidelines that explain how mergers are assessed? (Q11.9)  | yes = 0<br>no = 6   | 0                    |       | 6            | not answered | 6     | 6                    | 0      |
| Are there published administrative guidelines that explain how monetary sanctions for antitrust infringements are set by your competition agency, or recommended by it to the court? (Q11.10) | yes = 0<br>no = 6   | 0                    |       | not answered | 0            | 6     | 0                    | 0      |

*Advocacy indicators*

| SECTION 9. ADVOCACY  | Answers and scoring | Syrian Arab Republic |         |         |       |                      |        |   |
|--|---------------------|----------------------|---------|---------|-------|----------------------|--------|---|
|  |                     | Morocco              | Tunisia | Algeria | Egypt | Syrian Arab Republic | Kuwait |   |
| Does your competition agency (or another public body) advocate competition at central government level? (Q9.1) | yes = 0<br>no = 6   | 0                    | 0       | 0       | 0     | 0                    | 0      | 0 |
| Does your competition agency (or another public body) advocate competition                                     | yes = 0<br>no = 6   | 0                    | 0       | 0       | 0     | 0                    | 0      | 0 |

|   | Answers and scoring   | Syrian Arab Republic |         |         |       |                      |        |
|---|---|----------------------|---------|---------|-------|----------------------|--------|
|   |   | Morocco              | Tunisia | Algeria | Egypt | Syrian Arab Republic | Kuwait |
| at local or regional government levels? (Q9.2)  |   |                      |         |         |       |                      |        |
| Are all new public policies <u>that may have implications for competition</u> subject to a competition assessment in your jurisdiction? (Q9.3)  | yes = 0<br>yes (but not all of them) = 3<br>no = 6 not applicable = 6 | 0                    | 0       | 0       | 0     | 0                    | 0      |
| Can market/sectoral studies be performed in your jurisdiction? (Q9.4)   | yes = 0<br>no = 6<br>not applicable = 6                               | 0                    | 0       | 0       | 0     | 0                    | 0      |
| If yes, has <u>at least one</u> market/sectoral study been performed in your jurisdiction <u>in the last five years</u> ? (Q9.5)  | yes = 0<br>no = 6<br>not applicable = 6                               | 0                    | 0       | 0       | 0     | 0                    | 0      |
| If a market/sectoral study identifies an obstacle or a restriction to competition caused by an existing public policy, can the study include an opinion/recommendation to the government to remove or reduce such obstacle or restriction? (Q9.6) | yes = 0<br>no = 6<br>not applicable = 6                               | 0                    | 0       | 0       | 0     | 0                    | 0      |

|   | Answers and scoring  | Morocco | Tunisia | Algeria | Egypt | Syrian Arab Republic | Kuwait |
|---|--|---------|---------|---------|-------|----------------------|--------|
| If a market/sectoral study includes an opinion/recommendation to the government concerning an obstacle or restriction to competition caused by an existing public policy, is the government required to publicly respond to this opinion/recommendation? (Q9.7) | yes = 0<br>no, but it usually responds =3, no =6<br>not applicable = 6 | 0       | 3       | 6       | 3     | 3                    | 6      |

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